

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MDL NO. 2804

CASE NO. 17-md-2804

Hon. Dan A. Polster

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

TRACK THREE CASES

VOLUME I

REMOTE VIDEO DEPOSITION OF

JAMES RAFALSKI

(CONTAINS TESTIMONY DESIGNATED HIGHLY CONFIDENTIAL)

June 10, 2021

REPORTED BY: Laura H. Nichols

Certified Realtime Reporter,

Registered Professional

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21  
22  
23  
24  
25

INDEX OF EXAMINATION

Page :

|                               |     |
|-------------------------------|-----|
| DEPONENT: JAMES RAFALSKI      | 24  |
| EXAMINATION BY MR. LIVINGSTON | 24  |
| EXAMINATION BY MS. SWIFT      | 160 |
| EXAMINATION BY MS. MCENROE    | 245 |
| EXAMINATION BY MS. FUMERTON   | 303 |
| EXAMINATION BY MR. RUIZ       | 339 |

INDEX OF DEFENDANT GIANT EAGLE EXHIBITS, VOLUME I

Page :

|   |       |
|---|-------|
| GE Exhibit 2  | 31-15 |
| Expert Report, Analysis of<br>Distributor Regulatory Compliance to<br>Maintain Effective Controls for the<br>Prevention of Diversion of Controlled<br>Substances on Behalf of Lake and Trumbull<br>Counties, Ohio, Prepared by<br>James E. Rafalski |       |
| GE Exhibit 6  | 86-7  |
| Memorandum, beginning with Bates<br>Number CAN_MDL_PRIORPROD_DEA12_00000609<br>(Confidential)   |       |

Page 14

1 INDEX OF DEFENDANT GIANT EAGLE EXHIBITS, VOLUME I,  
2 CONTINUING  
3

4 Page:

5 GE Exhibit 8 51-7

6 Expert Report of Craig J. McCann,  
7 Ph.D., CFA, March 25, 2019

8 GE Exhibit 9 52-23

9 Expert Report of Craig J. McCann,  
10 Ph.D., CFA, April 16, 2021

11 GE Exhibit 10 119-23

12 Indexed Comparison of Growth in HCP  
13 DEA Quota & In Dispensing by Giant Eagle in  
14 Lake & Trumbull Counties, in MME, Bates  
15 Number GE\_TL000000001

16 GE Exhibit 17 128-9

17 Volume I, Videotaped Deposition of  
18 Kyle J. Wright, February 28, 2019

19 GE Exhibit 18 133-2

20 Total Prescriptions and Control  
21 Prescriptions Filled by Giant Eagle  
22 Pharmacies in Lake & Trumbull Counties  
23 January 1, 2006 - November 20, 2019  
24 (Confidential)  
25

Page 15

1 INDEX OF DEFENDANT GIANT EAGLE EXHIBITS, VOLUME I,  
2 CONTINUING

3 Page:

4 GE Exhibit 19 138-1

5 Declaration of Diversion  
6 Investigator James E. Rafalski, Under  
7 Penalty of Perjury

8 GE Exhibit 20 134-17

9 Market Share of At-Issue Opioids  
10 Lake and Trumbull Counties,  
11 January 1, 2008 - December 31, 2018  
12 (Confidential)

13 GE Exhibit 24 114-18

14 Comparison of Rafalski's  
15 Methodologies for Flagging Distribution  
16 Orders (Methods A to G) Flagged Orders of  
17 Hydrocodone, HBC to Giant Eagle Pharmacies  
18 in Lake County (Confidential)

19 GE Exhibit 30 57-20

20 Invoice Submitted by:  
21 James E. Rafalski, Billing Hours for  
22 November 1 through November 30

23 GE Exhibit 32 130-16

24 Videotaped Deposition of  
25 Joseph Rannazzisi, Volume I, July 16, 2020,

Page 16

1 INDEX OF DEFENDANT GIANT EAGLE EXHIBITS, VOLUME I <  
2 CONTINUING  
3

4 Page:

5 GE Exhibit 42 63-22

6 Bench Trial Transcript - Volume 18,  
7 May 26, 2021

8 GE Exhibit 46 199-06

9 2003 Bill Tracking OH H.B. 377

10 GE Exhibit 49 141-15

11 Email string, Bates Numbers  
12 PPLPC018000279573 through PPLPC018000279574  
13 (Confidential)

14 GE Exhibit 50 150-4

15 Average Monthly Oxycodone 80mg  
16 Dosage Units Dispensed OARRS Data, Lake and  
17 Trumbull Counties 2008 -2018 (Confidential)  
18  
19

20 INDEX OF DEFENDANT WALGREENS EXHIBITS, VOLUME I  
21

22 Page:

23 WAG Exhibit 1 168-9

24 Opioid Shipments to Pharmacies in  
25 Trumbull County, OH, 2006 - 2014

1 INDEX OF DEFENDANT WALGREENS EXHIBITS, VOLUME I,  
2 CONTINUING  
3

4 Page:

5 WAG Exhibit 2 184-23

6 Opioid Shipments to Pharmacies in  
7 Trumbull County, OH, 2006 - 2014

8 WAG Exhibit 3 190-4

9 Ohio Prescription Drug Abuse Task  
10 Force, Final Report, Task Force  
11 Recommendations, October 1, 2010

12 WAG Exhibit 4 196-20

13 Superseding Indictment

14 WAG Exhibit 5 214-8

15 Remote Videotaped Deposition of Drug  
16 Enforcement Agency 30(b)(6) Designee Claire  
17 Brennan, Friday, November 13, 2020  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF DEFENDANT RITE AID EXHIBITS, VOLUME I

Page:

RITE Exhibit 1 273-2

Email, Kevin Mitchell to  
blucero@riteaid.com, et al., 1/28/2008,  
Bates Number Rite\_Aid\_OMDL\_0016954  
(Confidential)

RITE Exhibit 2 286-15

Email, Kimberly Birklin to Heather  
White, 12/28/2009, Bates Number  
Rite\_Aid\_OMDL\_0068316 (Confidential)

RITE Exhibit 3 287-10

Email, Kimberly Birklin to Heather  
White, 1/12/2010, Bates Number  
Rite\_Aid\_OMDL\_0068320 (Confidential)

RITE Exhibit 4 287-17

Email, Kimberly Birklin to Heather  
White, 2/2/2010, Bates Number  
Rite\_Aid\_OMDL\_0068321 (Confidential)

RITE Exhibit 5 287-25

Email, Kimberly Birklin to Heather  
White, 3/1/2010, Bates Number  
Rite\_Aid\_OMDL\_0068326 (Confidential)

1 INDEX OF DEFENDANT RITE AID EXHIBITS, VOLUME I,  
2 CONTINUING  
3

4 Page:

5 RITE Exhibit 6 288-5

6 Email, Kimberly Birklin to Heather  
7 White, 4/06/2010, Bates Number  
8 Rite\_Aid\_OMDL\_0068329 (Confidential)

9 RITE Exhibit 7 288-11

10 Email, Kimberly Birklin to Heather  
11 White, 5/3/2010, Bates Number  
12 Rite\_Aid\_OMDL\_0068331 (Confidential)

13 RITE Exhibit 8 288-14

14 Email, Kimberly Birklin to Heather  
15 White, 6/1/2010, Bates Number  
16 Rite\_Aid\_OMDL\_0068332 (Confidential)

17 RITE Exhibit 9 288-19

18 Email, Kimberly Birklin to Heather  
19 White, 7/6/2010, Bates Number  
20 Rite\_Aid\_OMDL\_0068335 (Confidential)

21 RITE Exhibit 10 288-24

22 Email, Kimberly Birklin to Heather  
23 White, 8/2/2010, Bates Number  
24 Rite\_Aid\_OMDL\_0068337 (Confidential)

25

INDEX OF DEFENDANT RITE AID EXHIBITS, VOLUME I,  
CONTINUING

Page:

RITE Exhibit 11 289-4

Email, Kimberly Birklin to Heather  
White, 9/8/2010, Bates Number  
Rite\_Aid\_OMDL\_0068339 (Confidential)

RITE Exhibit 12 289-9

Email, Kimberly Birklin to Heather  
White, 10/4/2010, Bates Number  
Rite\_Aid\_OMDL\_0068341 (Confidential)

RITE Exhibit 13 289-14

Email string, Bates Numbers  
Rite\_Aid\_OMDL\_0068346 to  
Rite\_Aid\_OMDL\_0068347 (Confidential)

RITE Exhibit 14 295-23

Email with attachment, Keith Frost  
to Anna Karn, et al., 7/11/2012, Bates  
Numbers Rite\_Aid\_OMDL\_0020799 through  
Rite\_Aid\_OMDL\_0020801 (Confidential)

Page 21

INDEX OF DEFENDANT WALMART EXHIBITS, VOLUME I

Page:

Walmart Exhibit 1 304-17

Rafalski Notes for Deposition

Reference: CVS, Giant Eagle, Rite Aid,  
Walgreens and Walmart

INDEX OF CONFIDENTIAL DESIGNATIONS, VOLUME I

Page:

Testimony Designated as Confidential 235-11

S T I P U L A T I O N

IT IS STIPULATED AND AGREED, by and between the parties, through their respective counsel, that the deposition of JAMES RAFALSKI may be taken before Laura H. Nichols, Commissioner, Certified Realtime Reporter, Registered Professional Reporter and Notary Public;

That it shall not be necessary for any objections to be made by counsel to any questions, except as to form or leading questions, and that counsel for the parties may make objections and assign grounds at the time of trial, or at the time said deposition is offered in evidence, or prior thereto.

1 I, Laura H. Nichols, a Certified  
2 Realtime Reporter and Registered Professional  
3 Reporter of Birmingham, Alabama, and a Notary  
4 Public for the State of Alabama at Large, acting as  
5 Commissioner, certify that on this date, as  
6 provided by the Federal Rules of Civil Procedure of  
7 the United States District Court, and the foregoing  
8 stipulation of counsel, there came before me  
9 remotely via Zoom, on June 10, 2021, commencing at  
10 8:09 a.m. EDT, JAMES RAFALSKI, witness in the above  
11 cause, for oral examination, whereupon the  
12 following proceedings were had:

13  
14 \* \* \*

15 THE VIDEOGRAPHER: Good morning. We  
16 are now on the record. Today's date is June 10th,  
17 2021, and the time is now approximately 8:09 a.m.  
18 This begins the videotaped deposition of James  
19 Rafalski in the matter of National Prescription  
20 Opiate Litigation Track 3.

21 All counsel will be identified on the  
22 stenographic record. Will the court reporter  
23 please swear in the witness.  
24  
25

1 JAMES RAFALSKI,  
2 having been first duly sworn, was examined and  
3 testified as follows:

4

5 EXAMINATION BY MR. LIVINGSTON:

6 Q. Good morning, Mr. Rafalski. My name  
7 is Scott Livingston, and I represent Giant Eagle in  
8 a number of opioids cases, including Track 3.

9 A. Good morning, Mr. Livingston.

10 Q. Good morning. Are you -- where are  
11 you located this morning?

12 A. I am in a conference room at the  
13 Detroit Renaissance Hotel in Detroit, downtown  
14 Detroit, Michigan.

15 Q. Is there anybody physically present  
16 with you?

17 A. Attorney Kathleen Knight.

18 Q. Okay. I would just ask that counsel  
19 for the plaintiffs not talk to Mr. Rafalski off  
20 camera during this deposition here today.

21 MS. KNIGHT: We will follow the  
22 rules. Thanks very much.

23 Q. (BY MR. LIVINGSTON:) Mr. Rafalski,  
24 do you know who the plaintiffs are in Track 3?

25 A. Yes, I do.

1 Q. Who are they?

2 A. The Ohio counties of Trumbull County  
3 and Lake County.

4 Q. Okay. And do you know who the  
5 defendants are in Track 3?

6 A. I know the five defendants I provided  
7 an opinion on. I don't know that I know all the  
8 defendants.

9 Q. Okay. You are aware that there are  
10 other defendants in the case, right?

11 A. Yes. I just do not know who they  
12 are.

13 Q. Who are the defendants that you are  
14 aware of?

15 A. Walgreens, Walmart, Rite Aid, Giant  
16 Eagle and CVS.

17 Q. And those are all pharmacies,  
18 correct?

19 A. Well, they are -- they are  
20 distributors and chain pharmacies. They are  
21 companies, yes, sir.

22 Q. Well, they are businesses that they  
23 operate hundreds of pharmacies throughout the  
24 United States, correct?

25 A. It is one of their business entities,

1     yes, sir.

2             Q.       And incidental to that business, they  
3     have at some point in time, at least some them, had  
4     warehouses that they distributed some of the drugs  
5     that they sold to their own pharmacies, correct?

6             A.       Yes. I would agree with that,  
7     Mr. Livingston.

8             Q.       They did not distribute any drugs to  
9     any pharmacies other than their own?

10            A.       That is a correct statement.

11            Q.       And there are other defendants in  
12     this case who were pure distributors, meaning that  
13     they distributed to all kinds of customers who were  
14     not a part of their own businesses, correct? For  
15     example, McKesson, Cardinal, AmerisourceBergen,  
16     correct?

17            A.       If you mean that they did not own,  
18     self-own the pharmacies they were distributing to,  
19     yes, I would agree with that.

20            Q.       They were third-party distributors,  
21     correct?

22            A.       I don't know that I would call them  
23     third-party. They are just distributors, and they  
24     are a standalone, and they don't distribute to  
25     their own entities, other than for -- to each of

1       their distributors back and forth.

2               Q.       And those companies had thousands,  
3       literally thousands of customers, correct?

4               A.       That would be an accurate statement,  
5       yes, sir.

6               Q.       Now, before we get into the substance  
7       of your deposition here this morning, I want to  
8       just go over a few ground rules. The first is  
9       because this is a remote deposition, if for any  
10      reason you don't fully hear a question that I ask  
11      you, I am asking -- I would ask you that you  
12      promise to let me know so that I can repeat the  
13      question. Will you do that for me?

14              A.       I understand, sir.

15              Q.       And if for any reason, again, if you  
16      don't fully understand a question, I will re --  
17      will you promise to let me know and I will rephrase  
18      it for you?

19              A.       I understand, sir.

20              Q.       So if you answer one of my questions  
21      here today, can I assume that you both heard and  
22      understood the question?

23              A.       Yes, sir.

24              Q.       And you have given testimony in a  
25      number of other cases, correct?

1           A.       Yes, I have.

2           Q.       And they are all opioids cases,  
3 correct?

4           A.       That is correct, sir.

5           Q.       And, in fact, you gave a deposition  
6 up in a case pending in one of the New York state  
7 courts, correct?

8           A.       Yes, I did.

9           Q.       And that case is going to trial  
10 shortly, and you plan to testify in that case,  
11 correct?

12          A.       I have been told I am testifying, and  
13 I believe they started picking the jury. So yes, I  
14 believe I am testifying.

15          Q.       In your deposition in the New York  
16 case, the judge had some instructions that were  
17 read and given to all the experts in that case.  
18 And I would just like to read that same  
19 instruction.

20                   And his instruction was, "You are  
21 being deposed today because you have been  
22 designated as an expert by the plaintiffs in this  
23 lawsuit. Your role as an expert is not one of  
24 advocacy. Your role is to listen to the question  
25 and answer the question. You are not to comment on

1 anything beyond the information sought within the  
2 question. Your role as an expert is to provide  
3 answers based upon the facts as you believe them to  
4 be or assumptions based on facts your  
5 interrogator" -- I guess that would be me in this  
6 case -- "asks you to assume is true. You must be  
7 direct and not evade or become evasive. You are  
8 reminded that you are not an advocate. Be aware  
9 that the court will preclude any offer -- any  
10 proffer of evidence and/or testimony that is the  
11 product of sharp practices, evasiveness, coaching  
12 and/or an attempt to run the clock so as to  
13 engineer an expiration of the time allotted for the  
14 deposition."

15 Do you remember being read that  
16 instruction in the New York -- before the start of  
17 the New York deposition?

18 MS. KNIGHT: Objection to the form.  
19 Go ahead.

20 A. Yes, I do.

21 Q. (BY MR. LIVINGSTON:) Okay. And  
22 would you agree this morning to follow that  
23 instruction?

24 MS. KNIGHT: Objection to form.

25 A. Yes.

1           Q.       (BY MR. LIVINGSTON:) And just to  
2 quickly run through it, you have given testimony in  
3 the New York case. You have given testimony in  
4 Case Track 1 in the MDL opioids proceeding,  
5 correct?

6           A.       Testimony at a deposition, yes, sir.

7           Q.       And you also have given deposition  
8 testimony in Case Track 2 in the MDL, correct?

9           A.       Yes, both deposition and trial.

10          Q.       Okay. Yeah, you recently testified  
11 within the last week or two at the trial -- the  
12 Track 2 trial that is in Federal Court in West  
13 Virginia; is that correct?

14          A.       That's correct, sir.

15          Q.       And I believe you recently made an  
16 appearance for a deposition in a case pending in  
17 Georgia; is that correct?

18          A.       Yes, sir, that was last week.

19          Q.       Okay. Are there any other cases that  
20 you have testified in relating to opioids?

21          A.       No, sir. Not -- not as an expert  
22 witness. Obviously before when I was with the DEA.

23          Q.       Right. With that caveat. Do you  
24 plan or have you been retained to give testimony in  
25 any other opioids cases that you are aware of this

1 morning?

2 A. I have a retainer with New Mexico.  
3 That would be the State of New Mexico. And there  
4 has been discussion with the State of Nevada, but I  
5 don't have a retainer signed.

6 Q. And is it your practice to enter into  
7 a separate retainer agreement for every case that  
8 you provide testimony in?

9 A. I don't demand that. That is mostly  
10 up to the plaintiffs. It depends on what law firm  
11 I would be retained by.

12 Q. All right. I would like to ask you  
13 to go to Exhibit 2 in the Giant Eagle exhibits  
14 binder.

15 (GE Exhibit 2 was marked for  
16 identification.)

17 A. Okay.

18 Q. (BY MR. LIVINGSTON:) Do you see that  
19 this document is titled Expert Report. It says it  
20 is prepared by you. Is this -- is Exhibit 2 your  
21 expert report for Track 3?

22 A. Yeah, it appears to be.

23 Q. Okay. Before we get into your expert  
24 report, I would like to just ask, you know, in  
25 light of all this testimony that you have given in

1 related opioids proceedings, in order to try to  
2 streamline your deposition today, can the  
3 defendants rely on the accuracy and truthfulness of  
4 your answers in those other proceedings under oath,  
5 in depositions and trial testimony?

6 A. Yes, sir.

7 Q. Okay. So we don't have to reask  
8 those questions, because if we did that today, you  
9 would give the same or very similar responses; is  
10 that correct?

11 MS. KNIGHT: Objection to form.

12 A. Yes, sir.

13 Q. (BY MR. LIVINGSTON:) Okay. Now,  
14 Exhibit 2 is a hundred and fifty-eight page report,  
15 not including the schedules; is that correct?

16 A. That's correct.

17 Q. And is everything in this report  
18 accurate? I mean did you make sure and do  
19 everything humanly possible to make sure that  
20 everything in this report is accurate?

21 MS. KNIGHT: Objection to the form.

22 A. Yes.

23 Q. (BY MR. LIVINGSTON:) And you  
24 understand that it was imperative that you make  
25 sure that everything in this report is accurate,

1     because the plaintiffs in this case are asking for  
2     nearly three billion dollars in abatement costs, so  
3     the stakes are very high in this litigation,  
4     correct?

5             A.       Well, I don't know that I have a  
6     comment on what the potential outcome is. I just  
7     know that I prepared a report and I tried very hard  
8     to make sure that it was very accurate.

9             Q.       Right. But you also understand that  
10    the stakes in this case are very high, correct?

11            MS. KNIGHT: Objection to form.

12            A.       I guess. I don't really look at the  
13    potential results of the case, but I do understand  
14    it is a very important case.

15            Q.       (BY MR. LIVINGSTON:) Well, let me  
16    ask you this: You would certainly consider a  
17    request for three billion dollars to be a  
18    substantial request; would you not?

19            MS. KNIGHT: Objection to form.

20            A.       That is a substantial amount. But  
21    I -- just so I am clear, I don't take into  
22    account -- when I do my work and forming of my  
23    opinion, I don't take into account what the  
24    potential outcome could be for the trial.

25            Q.       (BY MR. LIVINGSTON:) And you would

1 also agree that your report should not be based on  
2 mere speculation or assumption; it should be based  
3 on facts, correct?

4 A. Yes, sir.

5 Q. And would you agree that, in your  
6 report, you should not hold the defendant  
7 pharmacies to any standards different than the  
8 standards you held pharmacies to while you were a  
9 DEA diversion investigator?

10 MS. KNIGHT: Objection to form.

11 A. Would you restate that question  
12 again, please?

13 Q. (BY MR. LIVINGSTON:) Yeah. You  
14 would agree that it would not be fair or proper in  
15 your report for you to hold the defendant  
16 pharmacies to any standards that are different than  
17 those you applied to pharmacies while you were a  
18 DEA diversion investigator in Detroit?

19 A. I'm not sure I fully agree with that  
20 statement, Mr. Livingston. I think there's some  
21 uniqueness between chain pharmacies and independent  
22 pharmacies. So I think there's a little bit of  
23 difference. So I don't fully agree with that  
24 statement, sir.

25 Q. What are the differences between a

1 chain pharmacy and an independent pharmacy?

2 A. Well, one is a chain pharmacy is  
3 overseen by management, layers of management. I  
4 think they have a lot of information available  
5 nationwide, whereas the independent works as an  
6 independent. I think the type of information and  
7 the amounts of information are vastly different.  
8 So I think they are somewhat different entities,  
9 although I agree they are both licensed as  
10 pharmacies.

11 At the pharmacy level, one-on-one,  
12 but I guess with your statement of just pharmacies,  
13 the chains I think have quite a bit different, more  
14 complex type of organization than just a  
15 standalone, independent pharmacy.

16 Q. Well, I think in light of your  
17 response, let me refine my question. Would you  
18 agree that you should not hold the defendant chain  
19 pharmacies to any standards different than those  
20 you applied to chain pharmacies while you were a  
21 DEA diversion investigator in Detroit?

22 MS. KNIGHT: Objection, form.

23 A. I would agree with that, yes, sir.

24 Q. (BY MR. LIVINGSTON:) And would you  
25 agree that you should not use standards in your

1 expert report that are different than those that  
2 your former DEA colleagues applied to the defendant  
3 pharmacies over the past ten to fifteen years?

4 MS. KNIGHT: Objection to form.

5 A. I do not agree with that statement,  
6 Mr. Livingston. First, I am not aware of what  
7 standards they applied. And so I guess I cannot  
8 agree to that statement, sir.

9 Q. (BY MR. LIVINGSTON:) Are you  
10 suggesting to the jury that your former DEA  
11 colleagues applied standards that were not approved  
12 by the DEA?

13 MS. KNIGHT: Objection to form.

14 A. No, I am not saying that. I am  
15 saying I don't know what standards they did apply  
16 or how effective they dealt with them or, you know,  
17 just in general -- just in general, I don't have  
18 any direct knowledge of any specific dealings that  
19 I could even comment on.

20 So not to -- it is difficult for me  
21 to agree to something when I really don't have a  
22 base of knowledge of how they were treated by other  
23 diversion investigators, I mean outside of just how  
24 they should be treated as a diversion investigator.

25 Q. (BY MR. LIVINGSTON:) All right. We

1 will try to drill down on that issue a little later  
2 in your deposition today to see if you have  
3 different standards than those that have been  
4 applied by your DEA colleagues over the years to  
5 the defendants in this matter. Talking  
6 about -- going back to your expert report, is this  
7 report final or preliminary? I mean is this -- are  
8 these all the opinions that you are going to be  
9 giving to the jury in this case later on?

10 A. Well, as we speak today, it is  
11 submitted and final as to today. I am aware, I  
12 believe, that there's still potentially some  
13 ongoing discovery material. So I guess if  
14 necessary, I guess if it is feasible, I potentially  
15 could maybe supplement my report. But it stands  
16 today as it is unless, as I said, there's any  
17 further discovery material that might affect my  
18 opinion.

19 Q. Did you receive any help in preparing  
20 your expert report?

21 A. Well, "help" is a broad term. So,  
22 yes, and some of the help would be in the form of I  
23 would request searches for certain documents or  
24 assistance for looking for certain documents. I  
25 would do searches myself, but I would ask for

1 secondary searches.

2 Q. Okay.

3 A. That would be kind of the main crux  
4 of the help I would receive.

5 Q. And is that help that you received --  
6 was the source of that help plaintiffs lawyers?

7 A. Yes, sir.

8 Q. And did they summarize any  
9 depositions or documents for you to review?

10 A. No. They provided documents and  
11 depositions but not summaries.

12 Q. All right. Would you turn to  
13 Schedule I in your -- attached to your report,  
14 which is Exhibit 2?

15 A. Yep, I have it.

16 Q. Okay. What is the schedule -- what  
17 is this listing here of documents and other  
18 matters?

19 A. I'm sorry?

20 Q. What does Schedule I contain?

21 A. All the documents I relied on in the  
22 completion of my report, sir.

23 Q. Let me make sure I understand. Are  
24 you saying that you reviewed each one of these  
25 documents that you have listed?

1           A.       I can't absolutely say that I have  
2       reviewed every document. I have been working on  
3       this litigation now for three years. So I  
4       believe -- I believe that I have looked at each of  
5       these documents or maybe not studied them in full  
6       but glanced at them or looked through them. I  
7       believe that is a reasonable assumption.

8           Q.       Well, I am just -- how can you rely  
9       on a document in formulating your opinions if you  
10      haven't -- if you don't actually review the  
11      document?

12          A.       Well, I am just answering that  
13      because I am not going to give you an absolute in  
14      case there's a document in here that I didn't look  
15      at or I don't recall looking at. But these are the  
16      documents -- as I moved forward over the last three  
17      years in doing reports, I'm confident that these  
18      are the documents that I relied on for this report.

19          Q.       Some of the documents listed are  
20      depositions. Did you review each one of those  
21      depositions in its entirety?

22          A.       There are probably some depositions  
23      that I read portions of and not complete.

24          Q.       And how would you know what portions  
25      to read?

1           A.       Well, sometimes I may ask the  
2       plaintiffs' attorneys -- in certain depositions, I  
3       would be looking for specific topics. And they  
4       would point me to specific areas of the deposition.

5                   And so when I find that area, I would  
6       generally go, you know, twenty to fifty pages  
7       before and after I read the deposition. Sometimes  
8       when I did that, I may read the whole deposition  
9       and other times I may only stick with that  
10      particular section.

11                   There are probably some depositions  
12      that I did not read the full deposition. I know  
13      there are some depositions that I started to read  
14      and -- maybe a salesperson or didn't find a lot of  
15      relevancy, so I may not have completed the  
16      deposition.

17           Q.       So with respect to depositions, in a  
18      number of cases, plaintiffs' lawyers directed your  
19      attention to certain portions of the deposition,  
20      correct?

21           A.       Generally -- so if I was working on a  
22      specific topic and doing a specific search or if I  
23      am reading a deposition, for example, a 30(b)  
24      deposition and they are naming other people within  
25      their deposition, I may ask if there were certain

1 sections of the deposition that I should focus on  
2 versus reading the entire deposition.

3 Q. Okay. Mr. Rafalski, it is kind of  
4 early in your deposition to be violating the New  
5 York court's instruction. Remember just answer --  
6 if it is a yes or no question, please answer yes or  
7 no so we can keep this thing moving as quickly as  
8 possible.

9 MS. KNIGHT: That is totally  
10 inappropriate. He is answering your questions. He  
11 can explain his answers.

12 Q. (BY MR. LIVINGSTON:) Now, you have  
13 no opinion at all in this case about the conduct of  
14 any pharmacies in Lake and Trumbull Counties other  
15 than the five defendant pharmacies in Track 3; is  
16 that correct?

17 A. Yeah, that is a correct statement,  
18 sir.

19 Q. And you have no opinion about whether  
20 any of those pharmacies who you didn't examine or  
21 offer any opinions about acted lawfully or  
22 unlawfully with respect to their filling of opioid  
23 prescriptions?

24 A. I believe that is a correct  
25 statement. I am not offering an opinion on

1 anything outside of the five defendants in my  
2 report.

3 Q. Do you even have any sense at all as  
4 to how many pharmacies are located in Lake and  
5 Trumbull Counties?

6 A. Yeah, I have a general idea. It is  
7 contained in Mr. McCann's analysis.

8 Q. How many?

9 A. I hate to guess without looking. I  
10 know it is contained in Section H of Appendix 9. I  
11 think around a hundred and twenty-five, a hundred  
12 and twenty some pharmacies total.

13 Q. And how many pharmacies do the  
14 defendants have in NHTSA-specific?

15 A. It varies between six and fifteen. I  
16 think the lowest is Walmart at six. I recall maybe  
17 thirteen for CVS, fourteen for Giant Eagle. I  
18 don't have a recollection of the other two off the  
19 top of my head, but it is in between -- it is in  
20 the thirteen, fourteen or fifteen with the  
21 exception of Walmart with six.

22 Q. And do you know how many of these  
23 pharmacies -- pharmacies operated by folks other  
24 than the defendants were, let's say from 2006 to  
25 the present, were shut down by the Ohio Board of

1 Pharmacy for filling illegal -- filling  
2 illegitimate opioid scripts?

3 A. I know there were some pharmacies  
4 closed. I don't know the number, sir.

5 Q. Can you even identify for the record  
6 a single pharmacy that was closed down by the Ohio  
7 Board for illegally filling opioid scripts?

8 A. No, sir.

9 Q. And you also in your report offer no  
10 opinions at all about whether the defendant's  
11 pharmacy stores acted lawfully or unlawfully in any  
12 way, shape or form with respect to the filling of  
13 opioid prescriptions, correct?

14 A. Contained in my opinion, in my  
15 report, I don't specifically cite any pharmacies  
16 that were operating unlawfully, if that is your  
17 question, sir.

18 Q. Maybe I am missing something, but  
19 when I read your report, I only saw opinions  
20 relating to the defendant pharmacies' distribution  
21 activities, correct?

22 A. Yes, sir. That is an accurate  
23 statement.

24 Q. Okay. There is nothing at all in  
25 your report relating to the defendant pharmacies'

1 activities as pharmacies, i.e., filling  
2 prescriptions?

3 A. That's a correct statement, sir.  
4 There's nothing in my report on that matter.

5 Q. Now, you certainly have the  
6 expertise, sir, to offer opinions about the  
7 defendant pharmacies' operations at the pharmacy  
8 level, correct?

9 MS. KNIGHT: Object to form.

10 A. I'm not sure that I have the  
11 expertise of a pharmacist. I think with my  
12 previous employment, I have done cases dealing with  
13 pharmacies at a certain level. But the question  
14 you asked was kind of broad.

15 So I don't have the ability to make  
16 judgments on the actual filling of prescriptions.  
17 It would be more of a pharmacist expert.

18 So potentially in certain aspects  
19 maybe but not the way I think you have described it  
20 or asked the question.

21 Q. (BY MR. LIVINGSTON:) Well, didn't  
22 you investigate and shut down -- I will say bad  
23 pharmacies in the Detroit area?

24 A. Yes, sir.

25 Q. And you have never been a

1 distributor, correct?

2 A. I have not.

3 Q. But you have offered opinions about  
4 distribution, correct?

5 A. Well, I shut down distributors also  
6 in my employment.

7 Q. Yeah, right. And you have offered  
8 opinions in these various opioid cases about the  
9 conduct of distributors, including the defendant  
10 pharmacies in this case, correct?

11 A. Yeah, that is a correct statement.  
12 Just clarification --

13 Q. Okay. So a lack of --

14 MS. KNIGHT: Scott -- Scott --

15 Q. (BY MR. LIVINGSTON:) The fact that  
16 you were never a distributor did not prevent you  
17 from offering an opinion about distribution,  
18 correct?

19 MS. KNIGHT: Mr. Livingston, you have  
20 got to let him finish answering his questions. You  
21 don't get to cut him off.

22 A. Just to finish the -- when I was  
23 answering, I have not been asked to provide an  
24 opinion in regards to a pharmacy. So I didn't  
25 conduct that analysis or do any research or review

1 any records to formulate an opinion related at a  
2 pharmacy level, and I was not asked to do that.

3 I only provided opinions on the  
4 distributors, and that is because that is what I  
5 was asked to do.

6 Q. (BY MR. LIVINGSTON:) That is what I  
7 suspected. So you could have provided an opinion  
8 about the pharmacy -- the defendant pharmacies'  
9 conduct as pharmacies, but you were not asked to do  
10 that and, therefore, you did not do that, correct?

11 A. That is a correct statement.

12 Q. Now, so far in all of the opioids  
13 cases in which you have offered any opinions and  
14 ultimately some testimony, you have always  
15 concluded that every suspicious order monitoring  
16 system that you examined was -- did not comply with  
17 the applicable DEA regulations; is that correct?

18 A. Generally speaking, I would answer  
19 yes. I think I may have provided testimony that  
20 there were certain time periods later -- later in  
21 the time frames that I reviewed that they had  
22 systems that had the potential to be effective  
23 systems.

24 Q. And we are talking at this point  
25 fifteen, twenty defendants whose distribution

1 activities you have offered opinions about; is that  
2 in the ballpark?

3 A. Yes, I think that would be -- that  
4 would be potentially accurate, yes, sir.

5 Q. Okay. So, so far the defendants are  
6 batting zero with you; is that fair to say?

7 MS. KNIGHT: Object to form.

8 A. Yes, sir, that would be an accurate  
9 statement.

10 Q. (BY MR. LIVINGSTON:) Okay. Given --  
11 you are aware that we are still in the midst of an  
12 opioids crisis, correct?

13 A. I would agree, yes, sir.

14 Q. Given that you have concluded that,  
15 in your view, all of these various defendants, many  
16 of whom are still operating today, do not have  
17 systems that comply with DEA regulations, have you  
18 reported them to the DEA? Have you called any of  
19 your old colleagues up and said you might want to  
20 examine so and so and take a quick look at, you  
21 know, this company or that company?

22 A. I have not, Mr. Livingston.

23 Q. Now, do you know Dr. McCann?

24 A. I do.

25 Q. And you have worked with him to some

1 extent in virtually all of the cases you have  
2 testified in so far; is that fair to say?

3 A. That is an accurate statement,  
4 Mr. Livingston.

5 Q. And just again for the jury's  
6 understanding, essentially, what you have done with  
7 Mr. -- with Dr. McCann is that you have provided  
8 him certain threshold methodologies, I will call  
9 them, for suspicious order monitoring systems. He  
10 has then applied those methodologies to the vast  
11 amounts of data in this case, and he has identified  
12 transactions that flag under each one of those  
13 methodologies; is that correct?

14 A. Yes. That is a good description of  
15 what he did, sir.

16 Q. And then you then reviewed the  
17 results, the mathematical results provided by  
18 Mr. -- by Dr. McCann, and then you used those  
19 results to reach your conclusions about whether and  
20 to what extent the defendants complied with the  
21 applicable DEA regulations, correct?

22 A. Well, generally speaking, I think my  
23 opinion is not just driven by the results of  
24 Dr. McCann. My opinions are driven by my review of  
25 the records and the review of the depositions and

1 internal documents. It is not just the results of  
2 Mr. McCann.

3 Q. Yeah, I didn't -- I didn't say that  
4 that was the only thing you relied on. I was just  
5 asking whether, in fact, that is one of the -- one  
6 of the main ingredients that you take into  
7 consideration is the results that Dr. McCann comes  
8 up with when you formulate your opinions?

9 A. No. I don't use -- I don't use  
10 documents -- I don't wait for Dr. McCann's results  
11 to formulate my opinion. The results that come up  
12 are the results of running the methodologies of the  
13 transaction data. My opinion is formulated through  
14 my review of -- as I previously stated, the  
15 depositions, the records, the policies and my  
16 opinion was formed without the data provided by  
17 Dr. McCann.

18 Q. Well, let's just cut to the chase.  
19 In your expert report, you literally replicate a  
20 number of the graphs produced by Dr. McCann after  
21 running your methodologies -- or applying your  
22 methodologies to the data, correct?

23 A. I don't know -- I utilized his  
24 graphs. I don't replicate them. I don't  
25 understand the question.

1           Q.       You include his graphs in your  
2       report, correct?

3           A.       Yes, sir, that is a correct  
4       statement.

5           Q.       And why do you do that?

6           A.       Well, because it is an indication on  
7       the graphs that I present in the reports that we  
8       have in front of us, it shows a sharp increase of  
9       distribution of opioids into Trumbull and Lake  
10      County.

11          Q.       Now, in Track 1, five defendants  
12      pharmacies, in this case Track 3, were also  
13      defendants in Track 1; do you recall that?

14          A.       Yes, sir.

15          Q.       And in Track 1, you provided only  
16      opinions about the distribution activities of CVS  
17      and Walgreens, correct?

18          A.       Yes, sir.

19          Q.       You did not provide an opinion  
20      regarding the distribution activities of Giant  
21      Eagle, Walmart and Rite Aid; is that correct?

22          A.       That's correct, sir, because I was  
23      not asked to.

24          Q.       And in Track 1, unlike yourself,  
25      Dr. McCann provided the results of your

1 methodologies for all five of the pharmacy  
2 defendants, including the three that you -- whose  
3 distribution activities you did not analyze,  
4 correct?

5 A. I don't have any recollection of  
6 whether Dr. McCann did that or not.

7 (GE Exhibit 8 was marked for  
8 identification.)

9 Q. (BY MR. LIVINGSTON:) Well, why don't  
10 we go to Exhibit 8, try to refresh your  
11 recollection real quickly.

12 Do you see that this is Dr. McCann's  
13 report dated March 25, 2019 in Case Track 1?

14 A. I do see that there.

15 Q. Yeah. And we didn't provide the  
16 whole report. We didn't want to kill trees. But  
17 if you just go to Pages 59 and 69, the next two  
18 pages that we included, and you can see, just as an  
19 example, for the trailing six-month maximum  
20 threshold flagged transactions for Cuyahoga County,  
21 Rite Aid, Walmart and HBC Service Company, which is  
22 a Giant Eagle company -- division, made the cut  
23 with respect to Dr. McCann, correct?

24 A. Well, looking at this document, I  
25 would agree with you that it appears he applied the

1 methodologies for these defendants.

2 Q. And Dr. McCann provided this  
3 information, all of this information to you when  
4 you prepared your report in Track 1, correct?

5 A. It was contained within Dr. McCann's  
6 report. I don't know that it is something he  
7 provided me. I only utilized the defendants that I  
8 was asked to provide an opinion on.

9 Q. And the number of flagged  
10 transactions for Giant Eagle, Walmart and Rite Aid  
11 that were identified by Dr. McCann in Track 1 are  
12 actually substantially greater than the number of  
13 flagged transactions for those three defendants in  
14 Track 3, correct?

15 A. I would have to go back and review my  
16 report. I don't dispute that, but without going  
17 back and comparing them, I don't want to take a lot  
18 of time to do that. So I don't dispute what you  
19 are saying.

20 Q. Well, why don't we go to Exhibit 9  
21 which is Dr. McCann's report in Track 3 at Pages 65  
22 and 68, which is Exhibit 9.

23 (GE Exhibit 9 was marked for  
24 identification.)

25 Q. (BY MR. LIVINGSTON:) And if you just

1 do this simple comparison here, the number of  
2 transactions in Track 3 for Rite Aid, Giant Eagle  
3 and Walmart are substantially less than the ones  
4 that were flagged in Cuyahoga and Summit, correct?

5 A. I would agree with that, sir.

6 Q. All right. Now, let's talk a little  
7 bit about your consulting job or job that you now  
8 have. So you left the DEA in 2017, correct?

9 A. Yes, sir, June of 2017.

10 Q. And within a month or two, you were  
11 retained by at least one of the plaintiffs to  
12 provide testimony in the opioids litigation; is  
13 that correct?

14 A. That an accurate statement. I think  
15 it was a couple months afterwards when I signed the  
16 retainer.

17 Q. What was your last year roughly --  
18 when you were at the DEA, what were you making as a  
19 diversion investigator?

20 MS. KNIGHT: No, sir. We are not  
21 going to talk about his salary at the DEA.

22 MR. LIVINGSTON: I don't think that  
23 is a state secret. We can probably look it up on  
24 the internet.

25 Q. (BY MR. LIVINGSTON:) You can answer

1 the question.

2 MS. KNIGHT: If you want to,  
3 Mr. Rafalski. But you don't have to answer that  
4 question.

5 A. I know that -- I don't know exactly  
6 how much I was making. I would believe it would be  
7 somewhere in the range of a hundred and twenty  
8 thousand a year, one twenty-five maybe. But it has  
9 been several years, and I don't exactly know what  
10 my income was.

11 Q. (BY MR. LIVINGSTON:) Okay.

12 A. I was a Grade 13, I think, a Step 5  
13 or 6.

14 Q. How much roughly -- you know, we are  
15 not going to hold you to the penny by any means,  
16 but just to give the jury a sense of how much money  
17 you earned for your work in Track 1, can you tell  
18 us?

19 A. CT1?

20 Q. Yeah, CT1.

21 A. I know that has been provided  
22 previously by the plaintiffs' attorneys. I don't  
23 really keep a running track of what I am paid by  
24 each litigation.

25 Q. All right. Well, let me ask you

1     this --

2             A.       I may have -- I am sure I have  
3     testified to that before in previous depositions,  
4     but I, just off the top of my head, don't have it  
5     here today.

6             Q.       Right. You did testify that you had  
7     earned about a hundred thousand dollars in Track 1  
8     before the start of your deposition. But the start  
9     of your deposition wasn't the end of the case. So  
10    that is why I don't know how much in total you  
11    earned from your efforts in Track 1.

12            MS. KNIGHT: Object to form.

13            Q.       (BY MR. LIVINGSTON:) Maybe we can  
14    make this easier. Is the only way you have been  
15    earning a living since you retired from the DEA has  
16    been acting as a consultant for the plaintiffs in  
17    the opioids litigation?

18            A.       No. I have a couple of pensions and  
19    now Social Security, Mr. Livingston.

20            Q.       Yeah. But I mean in terms of  
21    actually a job, the only thing that you are  
22    actually doing -- I mean those are pensions or  
23    Social Security, you know, that doesn't have  
24    anything to do with -- the only job you have had  
25    for which you have been paid since you retired from

1 the DEA is acting as a consultant for the  
2 plaintiffs in the opioids litigation, correct?

3 A. That's correct.

4 Q. All right. So I don't care about  
5 your pension or Social Security revenue. But how  
6 much did you earn in 2017 from your efforts on  
7 behalf of the plaintiffs?

8 MS. KNIGHT: Objection to the form.  
9 You don't have to answer that question, but you --

10 THE REPORTER: I'm sorry, but you're  
11 trailing off, Ms. Knight. I heard "objection to  
12 the form. You don't have to answer that question,  
13 but you --"

14 MS. KNIGHT: But only if you would  
15 like to, Mr. Rafalski. And I am sorry, I will do a  
16 better job of speaking up.

17 A. Mr. Livingston, I don't know. It  
18 was -- 2017 was negligible.

19 Q. (BY MR. LIVINGSTON:) All right. It  
20 was negligible. How about 2018?

21 A. Everything -- if I was to provide you  
22 with any numbers, it would be a guess. I didn't  
23 come prepared to answer those type of questions  
24 today. It was my understanding that that  
25 information had been provided to the defendants'

1 attorneys by the plaintiffs' attorneys. That is  
2 why I didn't prepare for that today.

3 Q. Right. And that is why I am asking  
4 for an estimate. I didn't prepare to testify today  
5 about how much I made over the last few years, but  
6 I could certainly ballpark it. Can you do that for  
7 us?

8 MS. KNIGHT: Objection to form.

9 A. No, I can't.

10 Q. (BY MR. LIVINGSTON:) Okay. How  
11 about last year, do you remember how much you made  
12 last year from your efforts on behalf of  
13 plaintiffs?

14 MS. KNIGHT: Same objection.

15 A. I would say generally, roughly  
16 speaking, about a hundred thousand dollars.

17 Q. (BY MR. LIVINGSTON:) Okay.

18 A. Just generally speaking.

19 Q. Would you go to Exhibit 30?

20 (GE Exhibit 30 was marked for  
21 identification.)

22 Q. (BY MR. LIVINGSTON:) Do you see that  
23 these are your invoices for your work in this case?  
24 Can you confirm that?

25 A. They are.

1 Q. Are they accurate?

2 MS. KNIGHT: Bear with him just a  
3 moment, Mr. Livingston. He is flipping through.

4 A. Yes, but I will give you the caveat  
5 they are probably conservatively accurate.

6 Q. (BY MR. LIVINGSTON:) I totaled them  
7 up, and they are over seventy thousand. Does that  
8 sound about right to you?

9 A. I believe that could be potentially  
10 right. I think the hours were somewhere around two  
11 twenty-five or two thirty-five. I know I totaled  
12 the hours in case you asked, but I didn't total the  
13 dollar amount.

14 Q. Right. And obviously these invoices  
15 don't include how much you are being paid for your  
16 services in the Georgia case, in the Track 2 case  
17 or in the New York case, correct?

18 A. These are only billings for CT3  
19 track, sir, you are correct.

20 Q. And in those other cases, you have  
21 billed time in those cases this year, correct?

22 A. Yes.

23 Q. Do you have any sense of how much  
24 unbilled time you have on all these pending matters  
25 that you are working on right now?

1 MS. KNIGHT: Objection to form.

2 A. I don't have any unbilled time  
3 outside of for the month of June. I bill at the  
4 end of each month. So that would be the only  
5 unbilled time, if that is the question you are  
6 asking.

7 When I said these are conservative, I  
8 generally say that -- I say that because there's  
9 probably time I spend reading or doing things that  
10 I don't bill to the plaintiff attorneys.

11 Q. (BY MR. LIVINGSTON:) Okay. Now I  
12 would just like to quickly switch to your years  
13 with the DEA. You were with the DEA from 2004 to  
14 2017, correct?

15 A. Yes, sir.

16 Q. And in order -- you were during that  
17 whole period a DEA diversion investigator; is that  
18 correct?

19 A. That's correct, sir.

20 Q. Okay. And what is the next level  
21 above a DEA diversion investigator? Is that a  
22 group supervisor?

23 A. That is correct, a GS14.

24 Q. And then what is the next level above  
25 that?

1           A.       A diversion program manager, that is  
2       a GS15.

3           Q.       In those thirteen years, you did not  
4       advance to group supervisor, is that correct?

5           A.       No, sir. I had no desire to be in  
6       management.

7           Q.       When you applied to the DEA -- well,  
8       before I ask that question, are you aware of the  
9       fact that the DEA also has special agents?

10          A.       Yes, I am aware of that.

11          Q.       And unlike a diversion investigator,  
12       a special agent has the ability to arrest people,  
13       conduct surveillance, serve subpoenas and that sort  
14       of thing and arrest people?

15          A.       That would be a correct statement.  
16       As a diversion investigator, I am not a law  
17       enforcement officer, and the difference would be  
18       that special agents are, so they carry guns, have  
19       authority to make arrests, search warrants, handle  
20       confidential informants, do surveillance. I am  
21       restricted from doing those type of things.

22          Q.       And over the course of your years  
23       while you were with the DEA as a diversion  
24       investigator, you would oftentimes work with  
25       special agents when you were investigating a bad

1 pharmacy or a distributor; is that correct?

2 A. During the first four or five years  
3 of my employment -- maybe not the first year, but  
4 the second year, for probably at least four years,  
5 I partnered up specifically with a special agent  
6 in -- well, as a diversion investigator. It's kind  
7 of a unique pairing in the Detroit office.

8 Q. And at some point in time when you  
9 were with the DEA, there was a push to -- I think  
10 they're called tactical, you know, diversion  
11 squads, or I'm not sure. I may be getting the  
12 acronym wrong.

13 Can you correct me on that?

14 A. No. It's the tactical diversion  
15 squad. It was a management change that was made in  
16 the DEA sometime late 2010, early 2011, at least in  
17 the Detroit office.

18 Q. Okay. And would those squads usually  
19 include at least somebody like yourself and also a  
20 special agent?

21 A. They would generally be comprised of  
22 special agents, task force officers. Those would  
23 be outside police officers that come and work and  
24 get a federal authority to work in that capacity.  
25 And one or two diversion investigators.

1           Q.       When you joined the DEA, or at any  
2 point thereafter, did you ever apply to become a  
3 special is agent?

4           A.       No. It's age limited at  
5 thirty-seven. Early in my career as a police  
6 officer, I was -- became a task force officer for  
7 five years back in the late '80 -- '89 to '95. So  
8 I spent a lot of time with the DEA, but didn't  
9 shift over. Thought about it, but had already  
10 established a career in law enforcement, so I  
11 stayed at the local level.

12          Q.       So are you saying that the -- you  
13 didn't have the opportunity to become a special  
14 agent because there was an age cutoff?

15          A.       Later in my career when I became a  
16 diversion investigator, yes, sir.

17          Q.       Okay. Now, your -- the entire time  
18 that you were with the DEA, you were in the Detroit  
19 office; is that correct?

20          A.       That's correct. Detroit divisional  
21 office.

22          Q.       And that's where you're from, right,  
23 Detroit?

24          A.       Yes, sir. Born and raised in the  
25 suburbs outside of Detroit.

1           Q.       Okay. And the Detroit office was  
2 responsible for both Ohio and Michigan; is that  
3 correct?

4           A.       So the divisional office has a much  
5 greater area of coverage. But my assignment in  
6 diversion in Detroit, I would cover the upper and  
7 lower peninsulas of Michigan, and six counties in  
8 Ohio that border Michigan.

9           Q.       Yeah. I thought -- you testified in  
10 the Track 2 trial that you were responsible for  
11 some counties in northeastern Ohio; is that  
12 correct?

13          A.       There's six counties in Ohio. I  
14 think there -- I might have said that. I think  
15 there -- there -- I don't know that there's a  
16 northeastern. They're the counties that fall right  
17 under Michigan. Primarily, the only county I spent  
18 a majority of my time was the county with the city  
19 of Toledo.

20          Q.       Well, did you misspeak, then, in your  
21 Track 2 trial?

22                   (GE Exhibit 42 was marked for  
23 identification.)

24          Q.       I direct your attention to Pages 17  
25 and 18 from your testimony on May 26.

1           A.       I --

2           Q.       You were asked about your geography  
3     and you said, "In the Detroit office, I would cover  
4     the lower peninsula of Michigan, the upper  
5     peninsula of Michigan, and I would cover six  
6     counties in Ohio, six northern east counties in  
7     Ohio."

8                   Toledo is northwest, correct?

9           A.       Yes. Yes. Thinking about that  
10    testimony, not -- not right when I said it, but as  
11    you brought it up, and then thinking about the map  
12    of Ohio and being aware that it goes quite farther  
13    east than Michigan, it would be more correct to say  
14    that the northwest -- northwest areas that border  
15    Michigan.

16          Q.       All right. Would you go to Page 7 of  
17    your expert report, which is our Exhibit 2?

18                   Do you see in the first full  
19    paragraph at the top, you say, "As a DEA Diversion  
20    Investigator with thirteen years of experience  
21    (2004 - 2017), I am uniquely qualified to offer  
22    expert opinions regarding compliance with federal  
23    regulations governing the distribution of  
24    controlled substances."

25                   Do you see that statement?

1           A.       I do.

2           Q.       You're not telling the jury that  
3       you're the only former or current DEA person who is  
4       qualified to offer expert opinions regarding the  
5       defendants' compliance with DEA regulations, are  
6       you?

7           A.       I don't think that statement implies  
8       that, Mr. Livingston.

9           Q.       Well, what did you mean by  
10       "uniquely"?

11          A.       Well, I've done a couple of  
12       significant cases. The Masters case, the Harvard  
13       case and the Mallinckrodt case, that all was  
14       related to the distribution of oxycodone,  
15       thirty-milligram products to Florida.

16                   And as far as I'm aware, the  
17       Mallinckrodt case was the first case that was ever  
18       done regarding a manufacturer.

19                   So I think there's some uniqueness to  
20       my experience, but I don't mean that to mean that  
21       there's not another person that can't testify or be  
22       in the same capacity that I'm in.

23          Q.       Yeah. I mean, the DEA has brought  
24       hundreds of cases since you started, if not  
25       thousands of cases, against pharmacies and

1 distributors throughout the United States since you  
2 became a DEA employee in 2004, correct?

3 A. Well, I think that's accurate,  
4 although not many of those cases went to an order  
5 of show cause hearing and then rose through the  
6 administrator's ruling and then to the federal  
7 appellate court. I think that's one of the unique  
8 things about my experience.

9 Q. Now, when you were at -- in order to  
10 become a -- or when you became a DEA diversion  
11 investigator, you had to go to a twelve-week  
12 training course at Quantico in Virginia, correct?

13 A. That's correct, sir.

14 Q. And special agents also have to go to  
15 Quantico to be taught about all of the regulations  
16 that the DEA has and how to conduct themselves as a  
17 special agent, correct?

18 A. That's a correct statement. I  
19 believe it's longer than twelve weeks, though.

20 Q. Right. It's actually six months, as  
21 opposed to three months, correct?

22 A. I don't know the exact number of  
23 weeks, but it is longer, sir.

24 Q. Now, when you were with the DEA, you  
25 performed what are called "preregistration

1 investigations," where someone is applying for a  
2 DEA controlled substance license. And you also  
3 periodically performed cyclic investigations for  
4 current DEA license holders; is that correct?

5 A. That would be an accurate statement,  
6 sir.

7 Q. And the purpose of those inspections  
8 is essentially, if it's a preregistration  
9 situation, is to make sure that the registrant will  
10 be able to comply with the DEA regulations relating  
11 to controlled substances, correct?

12 A. That's a general statement I agree  
13 with.

14 Q. You would never approve of an  
15 applicant's request to become -- you know, to be  
16 able to handle controlled substances if you thought  
17 that they would not be able to comply with all of  
18 the applicable DEA regulations, correct?

19 A. That was my role as a diversion  
20 investigator. Not knowingly.

21 Q. Right. And it wasn't just you. I  
22 mean, that was what all DEA diversion investigators  
23 were taught to do is to closely examine a  
24 registrant's proposed security systems and to make  
25 sure that those systems will comply with the DEA

1 regulations, correct?

2 MS. KNIGHT: Objection to form.

3 A. Well, it's much more detailed than  
4 that. Security is one of the aspects, depending on  
5 what type of registrant it is.

6 Generally speaking, depending on what  
7 business activity the registrant is, it complies  
8 with those regulations that apply to that  
9 registration or business activity.

10 Q. (BY MR. LIVINGSTON:) Right. I  
11 didn't mean to suggest that those are the only  
12 regulations. But the security regulations are  
13 certainly important regulations that a registrant  
14 needs to be able to comply with, correct?

15 A. Well, I would say they're all  
16 important. But for certain registrants, security  
17 is an important aspect.

18 Q. Okay. And the Suspicious Order  
19 Monitoring Regulation 1301.74(b) is one of those  
20 security regulations, correct?

21 A. Yes, sir, it is.

22 Q. Okay. And your opinion, or opinions  
23 that are in your expert report, focus exclusively  
24 on the defendant's compliance with the -- I'll call  
25 it -- is it okay if I use "S-O-M" for short?

1           A.       Yeah. Or you can say "SOMs."

2           Q.       For compliance with the SOM  
3 regulation, your report is entirely limited to  
4 that, correct?

5           A.       That's not accurate.

6           Q.       Can you point to me in the report  
7 where you talk about the defendants' compliance or  
8 noncompliance with any regulation, other than the  
9 SOM regulation?

10          A.       Maintenance of effective controls to  
11 prevent diversion of controlled substances.

12          Q.       Oh, okay. Well, that's the  
13 overarching regulation, correct, with respect to  
14 security?

15          A.       Yes. Well, in respect to everything  
16 contained in the registrant's responsibility.

17          Q.       Right. And that over -- you have  
18 concluded that the defendants, in your view, did  
19 not comply with that overarching regulation,  
20 correct?

21          A.       That's a correct statement.

22          Q.       Right. But the basis for your  
23 conclusion that they did not comply with that  
24 overarching regulation is only the fact that you  
25 believe they did not comply with the SOM

1 regulation?

2 A. That's not accurate.

3 Q. What other -- yeah. So let me  
4 just -- so what other regulation, other than the  
5 SOM regulation, do you claim that they did not  
6 comply with?

7 A. Well, within the maintenance of  
8 effective controls, it's -- I guess you  
9 characterize it as -- it's an umbrella or an  
10 overarching -- there's activities that registrants  
11 conduct within -- specifically in a compliance  
12 program would be due diligence. And the lack of  
13 due diligence would be a failure that would lead to  
14 the maintenance of -- the loss of the maintenance  
15 of effective controls to prevent diversion.

16 It's not specifically in a  
17 regulation, but it encompasses the activity to  
18 ensure the holding of a registration.

19 Q. Okay. The due diligence requirement  
20 that you speak of is not anywhere in any  
21 regulation. But you believe that that obligation  
22 does apply to the defendants with respect to the  
23 operation of their SOM systems, correct?

24 A. It's not just the operation of their  
25 SOMs. It's an activity they do to maintain their

1 effective controls to prevent diversion. I think  
2 the ruling in the Masters case would confirm that,  
3 in that that's what the Court held, is that due  
4 diligence was an essential part of the compliance  
5 with the regulation.

6 Q. All right. We'll get to those  
7 regulations in a little more detail in a little  
8 bit.

9 But during these investigations, both  
10 preregistration and cyclic, one of the things that  
11 you always make sure that you check is the SOM  
12 system, if you're dealing with a distributor,  
13 correct?

14 A. I would make sure that -- are we  
15 speaking a new registrant?

16 Q. Well, I -- in both situations, you're  
17 going to make sure that they either are going to  
18 have a SOM system that complies with the DEA  
19 regulations, or that they currently have and are  
20 operating a SOM system that complies with the DEA  
21 regulations.

22 A. Generally speaking, I agree with  
23 that, yes, sir.

24 Q. I mean, that's right in the diversion  
25 investigator manual, that you're supposed to check

1 the SOM system, correct?

2 A. That may be something that's in the  
3 manual now. But back at the beginning of my  
4 employment, I don't know that there was a specific  
5 reference to a SOM system back when I started in  
6 2004.

7 Q. Well, it was your practice, wasn't  
8 it, even before it made it into the manual  
9 specifically, to always check the SOM system in  
10 your preregistration and in your cyclic  
11 investigations as well?

12 A. When applicable to a registrant, I  
13 would make sure that a registrant was going to be  
14 or was complying with all the regulations that were  
15 required under the registration.

16 Q. And these -- when you're doing a  
17 cyclic investigation, that's actually an  
18 unannounced investigation where you don't call up  
19 the distributor and say, hey, we're going to be  
20 there next week or anything, you just show up  
21 unannounced, right?

22 A. That's how I did them, and that's how  
23 we were trained as diversion investigators.

24 Q. And those investigations are pretty  
25 thorough where you actually go on-site, correct?

1           A.       They're all thorough. That's also  
2 dependent on the type of registrant that you're  
3 conducting the investigation on.

4           Q.       Right. But you literally go on-site.  
5 You meet with management. You perform an inventory  
6 audit, correct, you do things like that?

7           A.       It's much more in-depth than that.  
8 Those are some of the things we do. I'm not  
9 sure --

10          Q.       Yeah.

11          A.       -- but it's much more extensive.  
12                    Again, it's dependent on what type of  
13 registrant you're doing a cyclic on.

14          Q.       I'm sorry?

15          A.       Different investigations for  
16 different registrants.

17          Q.       And one of the things that you look  
18 at before you start any cyclic investigation --  
19 inspection or investigation, is that you look back  
20 at the results of prior inspections, correct?

21          A.       I'd have to think about -- I have --  
22 they always provide me with a Touhy letter,  
23 Mr. Livingston. And I guess there's some things in  
24 there that always -- I draw caution, and that is  
25 they all -- the Touhys always say it's something

1     that's not publicly known. I'm not sure that that  
2     particular answer to that question would be  
3     something that would be publicly known.

4             Q.       Well, Mr. Colosimo, who was the --  
5     one of the inspectors of Giant Eagle's facilities  
6     with thirty years' DEA experience testified in this  
7     case. And he did provide the inspection reports  
8     for Giant Eagle. And we're going to get to those.  
9     And he also testified and answered that question.

10            So I don't think there's a Touhy  
11     issue, so I would ask that you answer the question.

12            MS. KNIGHT: Objection to form. And  
13     Mr. Rafalski can absolutely invoke Touhy if he  
14     thinks it's appropriate, and you cannot override  
15     that request.

16            THE REPORTER: Ms. Knight, I'm still  
17     having trouble understanding you. I don't know,  
18     maybe you could get closer to a microphone.

19            MS. KNIGHT: Yeah. Is this better?

20            THE REPORTER: Yes.

21            MS. KNIGHT: I was sort of --

22            THE REPORTER: I heard, "Objection to  
23     the form. And Mr. Rafalski can also invoke Touhy  
24     if appropriate, and you cannot override that," was  
25     kind of what I heard.

1 MS. KNIGHT: That's exactly what I  
2 said.

3 THE REPORTER: Thank you.

4 A. Mr. Livingston, I would say that I  
5 would -- I would do preparations prior to going  
6 on-site. But I am a little cautious about exactly  
7 answering what I would do, what specific things I  
8 would do prior to conducting an investigation.

9 Q. (BY MR. LIVINGSTON:) All right. And  
10 was it DEA policy and practice, when you were with  
11 the DEA, for DEA diversion inspectors to prepare a  
12 report after they've completed their  
13 preregistration and/or their cyclic inspection as  
14 well, correct?

15 A. That's correct, sir.

16 Q. And those reports would at least be  
17 available for the next inspection that the  
18 registrant might have; is that correct?

19 A. Generally speaking, yes.

20 Q. And those reports were not given to  
21 the registrant, right, after the inspection was  
22 over? That was something that the DEA would just  
23 keep in its files, correct?

24 A. I never provided one to a registrant.

25 Q. Okay. But you would have a

1 discussion with management, and you would let the  
2 registrant know whether, in your view, they were in  
3 compliance or not in compliance with all of the  
4 applicable DEA regulations, correct?

5 A. There would definitely be a  
6 management meeting. And depending on the outcome  
7 of the investigation, would kind of dictate the  
8 kinds of conversation.

9 I don't -- sometimes -- I would  
10 generally be a little more cautious on being too  
11 complimentary or too negative. It's kind of a pass  
12 or fail.

13 Q. Okay. When you say "pass or fail,"  
14 meaning they either were in compliance or they were  
15 not in compliance, correct?

16 A. Sure. And if they were not in  
17 compliance at the time of the management  
18 conference, I didn't have the ability to tell them  
19 what was going to occur based on my findings that  
20 they were not in compliance.

21 So it wouldn't be a closed  
22 conversation at the end because I -- sitting there,  
23 I didn't have the ability to tell them. That's a  
24 management decision.

25 Q. Okay. So if they weren't in

1 compliance, you wouldn't necessarily tell them  
2 immediately. You would then go back to your  
3 superiors at the DEA and discuss what next steps  
4 might be?

5 A. That's a correct statement. As far  
6 as in Detroit, that's how we did that.

7 Q. Okay. And, you know, in terms of DEA  
8 enforcement efforts, when a registrant is not in  
9 compliance with its regulations, what's the first  
10 lowest level of enforcement that the DEA might  
11 undertake?

12 A. Well, in some rare instances, there's  
13 an actual on-site correction. So an example would  
14 be some minor recordkeeping issue that can be  
15 corrected on site, would be listed and would be  
16 detailed, but not what -- it would be a corrective  
17 action.

18 The next level up -- the next formal  
19 level up, or the lowest formal level, would be a  
20 letter of admonition.

21 Q. Okay. And then would the letter of  
22 admonition essentially give the registrant a  
23 certain period of time to try to get their act  
24 together and get into compliance?

25 A. It generally gave them thirty days to

1 take corrective action and notify the DEA.

2 Q. Okay. Let's just say -- assume you  
3 have a really recalcitrant registrant. If they  
4 don't do anything in response to the letter of  
5 admonition, what's the next step up the enforcement  
6 ladder?

7 A. You can actually have a divisional  
8 hearing. You can bring the registrant in to have a  
9 hearing in front of the diversion program manager.  
10 It's not utilized that often, but it does occur.  
11 That would be the next level.

12 Q. Okay. And, again, just so the jury  
13 gets a sense of what all the different enforcement  
14 levels are, what's the next step up the ladder?

15 A. Sometimes there could be a memorandum  
16 of agreement or understanding that might result  
17 from that hearing at the diversion program manager  
18 level.

19 The next level above that would be an  
20 order to show cause hearing.

21 Q. Okay. And --

22 A. So just so you're clear on that, that  
23 would be something that would be reviewed through  
24 management and through headquarters. It's not  
25 something that would be issued by a diversion

1 investigator.

2 Q. Okay. Would all these different  
3 steps be sort of civil proceedings, as opposed to  
4 criminal?

5 A. They would be administrative  
6 proceedings.

7 Q. Okay. What if you, as part of your  
8 inspection, uncovered criminal misconducted by the  
9 registrant, would there be a different -- different  
10 steps that would be taken against the registrant?

11 MS. KNIGHT: Objection to form.

12 A. Yes. A criminal investigation would  
13 be different, yes, sir.

14 Q. (BY MR. LIVINGSTON:) Okay. Now,  
15 would you agree that a registrant should be able to  
16 rely on a passing grade from the DEA and in feeling  
17 comfortable that their systems are, you know, in  
18 compliance with the DEA regulations?

19 MS. KNIGHT: Objection to form.

20 A. I'm not in total agreement. I guess  
21 it would depend on the circumstances. I think  
22 there's some levels of registrants' conduct -- most  
23 registrants are aware that they can ask for a  
24 decision or an opinion from the policy section of  
25 DEA headquarters.

1                   If it's something that's clearly a  
2     simpler issue contained within the regulations,  
3     that would be something I think that a registrant  
4     could rely on more. But if it would be more of a  
5     complex matter, I -- I would not agree with you.

6                   Q.       (BY MR. LIVINGSTON:) Well, let me  
7     just try to break that down.

8                   So are you saying that if you inspect  
9     my facilities, and I tell you -- I disclose  
10    everything. I say, here's the key to the -- my  
11    office. Take a look at everything I have. You  
12    know, all the documents I have. I explain to you  
13    in great detail how my SOM system operates. I show  
14    you my vault. I do -- I walk you through  
15    everything that you want to, you know, do and see.  
16    And at the end of it, you say, Scott, you're good  
17    to go, I can't rely on that?

18                  MS. KNIGHT: Objection to the form.

19                  A.       I think you can put some reliance on  
20    that. But I don't think that -- that as that DEA  
21    investigator leads, I don't think you can put your  
22    full faith that everything is perfectly correct.

23                  And I say that through my experience  
24    in some of the cases I've dealt with.  
25    Specifically, there have been issues where previous

1 inspections had not identified any issue.

2 Q. (BY MR. LIVINGSTON:) And -- yeah,  
3 I'm not talking about situations where, you know,  
4 the registrant tells you, here's our system, but  
5 they don't actually follow their system. They  
6 don't actually operate it the way they tell you.

7 I'm just talking -- assuming that the  
8 registrant actually operates the system in the  
9 manner in which they've described it to you. And  
10 you say, sounds good to me, shouldn't the  
11 registrant -- and as a matter of all fairness -- be  
12 able to rely on that representation that they're  
13 fine?

14 MS. KNIGHT: Objection to form.

15 A. I don't fully disagree with what  
16 you're saying. But I'd have to say that a  
17 registrant is bound to comply with the regulations,  
18 and that's not dependent on whether or not an  
19 inspection is conducted, and an issue is not found  
20 or discovered or detailed by a diversion  
21 investigation, it doesn't relinquish the  
22 responsibilities to comply with the regulations.

23 Q. (BY MR. LIVINGSTON:) Oh, no. Of  
24 course, the law is the law. The question is  
25 whether they can rely, in all fairness, on what

1     you're telling them as an expert. Right? These  
2     are DEA regulations. You're a DEA investigator  
3     whose job it is to enforce those regulations.  
4     Nobody knows those regulations, presumably, when  
5     you're on the job, any better than you, and you're  
6     coming in to a registrant and you're telling them  
7     that they're okay, shouldn't they be able to rely  
8     on that?

9                     MS. KNIGHT: Objection to form.

10            A.       As I answered earlier, I generally  
11     agree with that. But there are certain areas that  
12     a registrant should -- would seek a higher  
13     approval.

14            Q.       (BY MR. LIVINGSTON:) Let's now --  
15     I'd like to just give me a little road map here.  
16     Let's now focus on the DEA regulations that you've  
17     described in some detail so far this morning.

18                     Let's -- to do that, let's --

19                     MS. KNIGHT: Mr. Livingston, if we're  
20     switching gears, can we just take a quick  
21     five-minute comfort break? Is this --

22                     MR. LIVINGSTON: Sure.

23                     MS. KNIGHT: Okay. Real quick.

24                     THE VIDEOGRAPHER: The time is now  
25     approximately 9:18 a.m. We're off the record.

1 (Whereupon, a break was had from 9:18  
2 a.m. until 9:32 a.m. EDT)

3 THE VIDEOGRAPHER: The time is now  
4 approximately 9:32 a.m. We're on the record.

5 Q. (BY MR. LIVINGSTON:) Now,  
6 Mr. Rafalski, when you were conducting cyclic  
7 investigations of -- inspections of distributors  
8 back in the day when you were a DEA diversion  
9 inspector, you never had a Dr. McCann at your side  
10 to use the ARCOS data to run the methodologies that  
11 he ran on the registrant, correct?

12 A. No. I would have access to analysts  
13 that worked in headquarters in ARCOS.

14 Q. And did you ever have them run all  
15 these methodologies for a registrant?

16 A. No. You were -- I thought you were  
17 speaking in terms of doing a regulatory  
18 investigation.

19 Q. Yeah. I'm just asking that -- I know  
20 that to test the Defendants' compliance in this  
21 case, you used Dr. McCann to assist you in running  
22 the data through your methodologies.

23 Did you ever do that, or something  
24 similar to that, when you were a DEA diversion  
25 inspector?

1           A.       Yes.

2           Q.       What did -- when did you do it and  
3 with respect to whom?

4           A.       I think that's going to be another  
5 Touhy issue, Mr. Livingston.

6           Q.       Well, you just said that you did it,  
7 so I don't think it's a Touhy issue. We need to  
8 know --

9                   MS. KNIGHT: Mr. -- Mr. Livingston,  
10 if he invokes Touhy, and believes that that's his  
11 obligation under the law, then you can't override  
12 that. You're very familiar with that rule.

13                  MR. LIVINGSTON: I don't agree with  
14 your position on it.

15           A.       But I think to acknowledge it was  
16 done is different than telling what I did or who I  
17 did it with and who I did it for.

18           Q.       (BY MR. LIVINGSTON:) Well, no. The  
19 question was -- we know what you did because -- so  
20 the question is: Did you ever take the seven  
21 methodologies that are in your report and hand it  
22 to somebody with a Ph.D. in data analysis to run  
23 those methodologies through the registrant's data?

24           A.       To that specific question, I would  
25 answer no. I don't think that's the same question

1       you asked me earlier.

2               Q.       So the answer is no?

3               A.       That's correct. The answer is no.

4               Q.       Okay. And remember when we were  
5       talking before about the various levels of  
6       enforcement that were available to you as a DEA  
7       inspector, if a registrant was not in compliance  
8       with the regulations? Do you remember when we  
9       talked about that a minute ago?

10              A.       Yes. Available to the agency, not to  
11       me specifically. But, yes, I remember the  
12       conversation.

13              Q.       Right.

14                      When you inspected distributors while  
15       you were with the DEA, how often did you conclude  
16       that they were in full compliance with all  
17       applicable DEA regulations? Roughly, percentage,  
18       you know, ten percent, sixty percent, a hundred  
19       percent, ninety percent, whatever it is.

20                      MS. KNIGHT: Objection to form.

21              A.       Are you -- in regards to your  
22       question, was that specific to distributors?

23              Q.       (BY MR. LIVINGSTON:) Yes.

24              A.       I think generally speaking, off the  
25       top of my head, distributors -- there's a large

1 volume of regulations. So I would say that there  
2 was generally at least maybe fifty percent, maybe a  
3 little less of time where there would be some kind  
4 of violation.

5 Q. Okay. All right. Would you turn to  
6 Exhibit 6, Page 9? Giant Eagle Exhibit 6.

7 (GE Exhibit 6 was marked for  
8 identification.)

9 Q. (BY MR. LIVINGSTON:) And the pages  
10 are at the top. See, this is Section 1301.71 of  
11 the DEA's Controlled Substance Act regulations?

12 MS. KNIGHT: Mr. Livingston, that's  
13 not what's behind his tab.

14 A. 6? You said 6?

15 Q. (BY MR. LIVINGSTON:) Yes.

16 A. Tab 6 I have "Linden Barber" --

17 Q. Yeah. No. It -- yeah, but just go  
18 to the Page 9 at the top. It's a compilation of  
19 various -- yeah. Yeah. It was a trick question.  
20 Sorry about that.

21 A. No. I didn't hear the "Page 9." I'm  
22 sorry.

23 Okay. I'm there.

24 Q. Yeah. You're familiar with this  
25 regulation, correct?

1           A.       Yes, sir.

2           Q.       Okay. And when you would inspect  
3 registrants, you would try to make sure that they  
4 were complying with 1301.71, correct?

5           A.       Among many other regulations, yes.

6           Q.       I didn't mean it to be exclusive.  
7 But among -- that you would make sure they were in  
8 compliance at least with 1301.71?

9           A.       Yes.

10          Q.       And this regulation says, "All  
11 applicants and registrants shall provide effective  
12 controls and procedures to guard against theft and  
13 diversion of controlled substances."

14                   That is one of the regulations that  
15 you believe the defendants did not comply with in  
16 this case, correct?

17          A.       That's correct.

18          Q.       Now, the next sentence says, "In  
19 order to determine whether a registrant has  
20 provided effective controls against diversion, the  
21 administrator" -- that's really the DEA, right --  
22 "shall use the security requirements set forth in  
23 Sections 1301.72 through 1301.76," correct?

24          A.       Yes.

25          Q.       Okay. So if we want to know whether

1 the defendants are complying with this overarching  
2 requirement for having effective controls, the DEA  
3 says we're supposed to look at the -- all the  
4 regulations between 72 and 76, correct?

5 A. That's what this says, yes, sir.

6 Q. Yeah. And that's what you did when  
7 you were a DEA investigator, correct?

8 A. It's one of the things I did, yes,  
9 sir.

10 Q. Okay. And the SOM regulation is one  
11 of the regulations, but just one of the regulations  
12 between 1301.72 and 1301.76, correct?

13 A. That's correct.

14 Q. And then if we skip down to  
15 1301.71(b), it says, "Substantial compliance with  
16 the standards set forth in Sections 1301.72 to  
17 1301.76 may be deemed sufficient by the  
18 administrator after evaluation of the overall  
19 security needs -- or system -- overall security  
20 system and needs of the applicant or registrant."

21 Do you see that?

22 A. Yes, sir.

23 Q. What does "substantial compliance"  
24 mean?

25 A. Well, it -- the word "substantial"

1 would mean in compliance, substantial, more than  
2 just trying. It would be substantial in  
3 compliance.

4 Q. Well, doesn't it mean less -- at  
5 least less than one hundred percent?

6 A. That may be your interpretation. I  
7 think "substantial" would mean in compliance.

8 Q. Well, are you saying that your  
9 definition of "substantial" is there has to be  
10 perfect compliance?

11 A. I don't know that I'm saying there's  
12 perfect. But I think you couldn't find any obvious  
13 faults. It would be in compliance.

14 Q. Well, I mean, let's just assume that  
15 you're -- you get -- you're in compliance with nine  
16 out of ten or ten out of eleven. I mean, is that  
17 substantial? Or do you have to have perfect  
18 compliance? You can't be noncompliant with any  
19 regulation to be "in substantial compliance with  
20 the regulations"?

21 MS. KNIGHT: Objection to form.

22 A. I think substantial -- because if we  
23 look down at the column of different items to be in  
24 compliance with, they're broad and they give  
25 various descriptions. So I think "substantial

1 compliance" would mean you can't find any faults of  
2 noncompliance.

3 I'm not sure I would say it has to be  
4 perfect. But if you were to find that there were  
5 an obvious failure to be in compliance, that would  
6 not be substantial.

7 I think substantial is more than just  
8 average or trying. I think it shows a high level  
9 attempt to be in compliance.

10 Q. (BY MR. LIVINGSTON:) Now, you're  
11 very familiar with the SOM regulation, correct?

12 A. Yes, sir.

13 Q. And that regulation says that you  
14 have to have a Suspicious Order Monitoring system  
15 that's going to identify orders of unusual size,  
16 pattern or frequency, correct?

17 A. Well, in the beginning it says, "You  
18 must design and operate."

19 Q. Yeah. But the system is supposed to  
20 be able to identify unusual orders from a size,  
21 pattern and frequency perspective, correct?

22 A. But I don't -- yeah, it does say  
23 that, but I don't believe that's an exclusive  
24 statement. That doesn't say that's the only things  
25 that it should identify. But I would agree it does

1 say that.

2 Q. Okay. I mean -- and there's no  
3 definition for what the DEA means by "unusual,"  
4 correct?

5 A. There is not, and I think there's a  
6 reason for that.

7 Q. And would you agree that "unusual"  
8 essentially means "unexpected," something that's  
9 not -- you know, that's out of the norm, that's not  
10 expected?

11 A. I generally would agree with that. I  
12 think it would be something based on what your  
13 knowledge of the usual, what you've established as  
14 usual. It would be something you identified that's  
15 unusual, that would be correct.

16 Q. Yeah. Now, you're familiar,  
17 generally, with the fact that the DEA is  
18 responsible for quotas, manufacturing quotas for  
19 controlled substances, correct?

20 A. Yes. I received some training. I  
21 haven't handled quotas, but I'm aware of the quotas  
22 in the regulation.

23 Q. Yeah. I'm not going to get into the  
24 details of the quotas. But just that, for the  
25 jury's benefit, as a general matter, the quotas are

1 prepared by the DEA every year after they  
2 investigate to try to determine what the medical  
3 and research needs is for any particular drug that  
4 they regulate, correct?

5 A. Mr. Livingston, just so we're clear,  
6 there's different kinds of quotas. The aggregate  
7 quota, the manufacturing production quotas. But,  
8 yes, that -- what you said would be a true  
9 statement more at the level of the aggregate quota.

10 Q. Right. But just -- my point is just  
11 that the DEA does its level best to try to  
12 determine, in advance, for the next coming year,  
13 what the country's legitimate medical and research  
14 needs are for each drug?

15 MS. KNIGHT: Objection to form.

16 A. I'd agree with that statement.

17 Q. (BY MR. LIVINGSTON:) Yes. And  
18 then -- and that's -- again, based on the DEA's  
19 expectation -- expectation of what the medical  
20 demand and research demand for that drug will be in  
21 the coming year, correct?

22 MS. KNIGHT: Objection to form.

23 A. I think it's a little broader than  
24 that. I think there's input from the manufacturers  
25 throughout the country -- I think it's a broader

1 base of information that they rely on. Just --  
2 I've never worked in quotas, and I haven't helped  
3 set quotas, but that's just my knowledge through  
4 training and through working with the DEA.

5 Q. Yeah. And pharmacies have no role in  
6 setting those quotas, correct?

7 A. A specific pharmacy, I do not believe  
8 so, no, sir.

9 Q. I mean, the DEA doesn't call up the  
10 head of CVS and say, how much do you guys think we  
11 should, you know, put in for the quota for  
12 oxycodone, stuff like that --

13 MS. KNIGHT: Objection to form.

14 Q. (BY MR. LIVINGSTON:) -- right?

15 A. I don't have any knowledge whether  
16 they do or don't, Mr. Livingston.

17 Q. Well, to your knowledge, based --  
18 with respect to the regulations, that's not a  
19 source that the DEA consults, right, they don't  
20 call up pharmacies?

21 MS. KNIGHT: Objection to form.

22 Asked and answered.

23 A. Yeah. But I don't have any knowledge  
24 that maybe CVS is in a consortium or utilizes some  
25 entity to -- on their behalf. I just don't have

1 any -- the knowledge to answer that question,  
2 Mr. Livingston.

3 Q. (BY MR. LIVINGSTON:) And the DEA  
4 quotas are published, right? They're made publicly  
5 known throughout the country, correct?

6 A. Yes, sir. In the Code of Federal  
7 Regulation -- no, I'm sorry. In the Federal  
8 Register.

9 Q. So any pharmacy could review those  
10 quotas to see what the DEA expects to happen in  
11 terms of the manufacturing of any particular  
12 controlled substance for the coming year, correct?

13 MS. KNIGHT: Objection to form.

14 A. Anyone could go and review that in  
15 the Federal Register, and then they could commented  
16 on it, including CVS.

17 Q. (BY MR. LIVINGSTON:) All right. So  
18 just hypothetically, if the DEA quota for OxyContin  
19 for a given year is going to go up twenty-five  
20 percent, you would agree, wouldn't you, sir, that a  
21 pharmacy would not expect -- or I'm sorry. The  
22 fact that the pharmacy experienced a lesser  
23 percentage increase in the -- in the -- in  
24 prescriptions for that drug would not be  
25 surprising, would not be unusual, would not be

1 unexpected?

2 MS. KNIGHT: Objection to form.

3 A. I'm sorry. That -- I don't  
4 understand that question, Mr. Livingston.

5 Q. (BY MR. LIVINGSTON:) Yeah. Let me  
6 try it again.

7 So we know that the pharmacies will  
8 know in advance what the quota is going to be.  
9 Let's say that the quota for OxyContin is  
10 twenty-five percent for the coming year. So the  
11 DEA is expecting doctors to write twenty-five  
12 percent more scripts in the coming year.

13 And then the pharmacy experiences,  
14 let's say, a ten percent increase in the  
15 dispensing -- or in prescriptions for that drug.  
16 You would agree that, from the pharmacy's  
17 perspective, that ten percent increase is not  
18 unexpected?

19 MS. KNIGHT: Objection to form.

20 A. I don't have a base of knowledge in  
21 regards to the quotas that would allow me to either  
22 agree or disagree with that statement,  
23 Mr. Livingston.

24 Q. (BY MR. LIVINGSTON:) I'm not asking  
25 you to tell me what the quota -- what the basis of

1 the quota is. Just that if the -- you've already  
2 told me that you know that the quota is supposed to  
3 be a forecast of the coming medical and research  
4 demand for the drug, correct?

5 A. Yeah. But my answer is in regards to  
6 your hypothetical, is you said some percentages and  
7 some drug types and some expectations at a pharmacy  
8 level. And I just don't have -- that's a pretty  
9 broad question, hypothetical question.

10 It's -- the manufacturing is much  
11 more complex. And to make it a specific drug at a  
12 specific pharmacy, I just don't -- I don't think  
13 that's an accurate hypothetical, and I just don't  
14 have the expertise or the knowledge to answer that  
15 or agree with that or disagree with that.

16 Q. Okay. And when you asked Dr. McCann  
17 to run his methodologies, you did not ask him to  
18 take into consideration what the annual increases  
19 in the DEA quotas were for the drugs that he looked  
20 at, correct?

21 A. That's a correct statement. I did  
22 not do that.

23 Q. Let's try another hypothetical that's  
24 a little -- hopefully a little easier.

25 Let's assume that a pharmacy -- and

1 let's say Giant Eagle. It's folks at the corporate  
2 headquarters know that a pharmacy across the street  
3 from one of its pharmacies in Lake County is  
4 closing its doors. Its biggest competitor in the  
5 area is closing its doors.

6 And they do an analysis and they say,  
7 we think our prescriptions for controlled  
8 substances are probably going to go up by twenty  
9 percent because of that closure. And, in fact, the  
10 scripts for that drug go up twenty percent or less.

11 You would agree that, from Giant  
12 Eagle's perspective, that that increase was not  
13 unexpected, correct?

14 MS. KNIGHT: Object to form.

15 A. That's another complex hypothetical.  
16 Generally speaking, that could occur, but -- so  
17 what we're talking about there, the essence would  
18 be the Suspicious Order Monitoring system and due  
19 diligence.

20 So my expectations is that there  
21 would actually be some confirmation of that  
22 happening, and some due diligence investigation.  
23 But it could happen and I would agree with your  
24 hypothetical.

25 Q. (BY MR. LIVINGSTON:) And you did not

1 ask Dr. McCann to take into consideration, when he  
2 did his analysis, the closures or any stores, or  
3 anything from a market standpoint, that might have  
4 affected the demand for drugs at any particular  
5 pharmacy that was analyzed, correct?

6 A. I would agree with that statement,  
7 Mr. Livingston.

8 Q. You were involved in the Dr. Leo  
9 Ognen investigation. He was a bad doctor; is that  
10 correct?

11 A. Dr. Leo Ognen, yes, sir.

12 Q. Could you go to your report, Exhibit  
13 2, at Page 5? His investigation is one of the ones  
14 that you listed in your report.

15 A. That's correct.

16 Q. And you also indicated that it was  
17 that investigation and resulting criminal  
18 conviction that led to the creation of the OARRS  
19 database in Ohio; was that correct?

20 A. No. I recognized that you could draw  
21 that conclusion from that statement. What I was  
22 trying to say in that statement is Dr. Ognen was  
23 way pre-OARRS. So that was one of the first, that  
24 I was aware of, where I kind of created my own  
25 OARRS, for a better term.

1                   So to conduct that investigation,  
2                   literally had to go to multiple pharmacies in Ohio  
3                   and obtain prescribing reports and create a --  
4                   similar to the OARRS. But I did not design the  
5                   OARRS.

6                   (GE Exhibit 46 was marked for  
7                   identification.)

8                   Q.       (BY MR. LIVINGSTON:) Why don't we  
9                   look at Exhibit 46, because I want to try to get  
10                  the timing down right here.

11                  This is a 2003 Bill Tracking for  
12                  the -- what ultimately became the Ohio legislation  
13                  that created OARRS.

14                  And do you see that under "Status" it  
15                  was first introduced in January of 2004, correct?

16                  A.       Yes.

17                  Q.       And Dr. Ognen, according to his  
18                  indictment, he was still engaged in a criminal  
19                  conspiracy through much of 2004, correct?

20                  A.       That's correct.

21                  But looking at the bill for Ohio, I  
22                  think the bill was passed, signed in 2005 by the  
23                  governor. But I don't think the actual OARRS  
24                  became implemented until a much later date.

25                  Q.       Right. But your investigation of

1 Dr. Ognen in no way sparked the interest in Ohio  
2 for enacting OARRS, correct?

3 A. Yes. As I previously stated, I  
4 understand reading that, that you could draw that  
5 conclusion, but that wasn't my intent.

6 I -- in doing that investigation, we  
7 actually created a prescriber database that would  
8 have been similar to OARRS, but it was only  
9 specific to Dr. Ognen.

10 Q. Now, your opinion is that Giant Eagle  
11 violated the DEA's SOM regulation, correct?

12 A. Yes, sir.

13 Q. And for what period of time do you  
14 claim that Giant Eagle violated the DEA SOM  
15 regulation?

16 A. All the way through to 2016. And I  
17 don't know further than 2016 because I didn't do an  
18 in-depth review post 2016. I know that they had  
19 some issues that brought them -- looked like they  
20 appeared to be coming into compliance. But  
21 definitely from the time frame of 2000 -- prior to  
22 2009 all the way to 2016.

23 Q. Okay. I am -- yeah. It wasn't clear  
24 to me when I read your report what your time frame  
25 is for Giant Eagle's purported noncompliance. So

1 you are saying, you are clarifying that Giant  
2 Eagle's purported noncompliance only was from 2009  
3 when they first started distributing Schedule 3  
4 drugs, you say, through 2016?

5 THE REPORTER: You are getting a  
6 little soft, Mr. Livingston.

7 MR. LIVINGSTON: Okay. Is that  
8 better?

9 THE REPORTER: Yes, sir.

10 MR. LIVINGSTON: Thank you.

11 A. Well, they -- so there was two  
12 facilities. The first facility stopped  
13 distributing this 2014.

14 Q. (BY MR. LIVINGSTON:) Right. When  
15 there was a reclassification from hydrocodone from  
16 Schedule 3 to 2, correct?

17 A. Correct. And then they did not  
18 self-distribute for a couple of years, and then  
19 they started back self-distributing in 2016. So my  
20 opinion definitely goes from 2009 to 2014 and then  
21 when they started to self-distribute again from the  
22 GERX DC, I have some information contained in my  
23 report, but I did not have enough information to  
24 make a definitive opinion on their conduct post  
25 2016.

1           Q.       All right. So let's just focus on  
2       the gap period between 2014 and '16 when the second  
3       facility known as GERX was opened up. You have no  
4       opinion obviously that Giant Eagle was doing  
5       anything wrong as a distributor because they were  
6       not a distributor, correct?

7           A.       No, I don't agree with that.

8           Q.       So even though they were not a  
9       distributor after 2014, you are saying they were  
10      still not complying with the SOM regulation?

11          A.       I didn't say the SOM regulation.  
12      That wasn't -- I don't believe that was the  
13      question you asked.

14          Q.       Yeah, I think you are getting me -- I  
15      am starting to chase my tail here or feel like it.

16                    So are you saying yes or no that you  
17      have an opinion post 2014 about Giant Eagle?

18          A.       I believe the period between 2014 and  
19      2016, there's a maintenance of effective controls  
20      issue with the distribution from I believe it was  
21      McKesson that distributed to them. But in  
22      regards -- if we are just talking specifically  
23      SOMs, I do not have an opinion past 2014 on the  
24      SOMs issue.

25          Q.       So in the period that you mentioned

1 after 2014 with respect to McKesson, Giant Eagle  
2 was a customer of McKesson, correct?

3 A. That's correct.

4 Q. And you are saying that, as a  
5 customer, Giant Eagle had an obligation to have a  
6 SOMs system?

7 MS. KNIGHT: Objection to form.

8 A. I don't think the regulation requires  
9 that -- requires that. I think, as a chain  
10 pharmacy, I think they still had the responsibility  
11 to monitor the purchases of their -- of their  
12 pharmacies.

13 Q. (BY MR. LIVINGSTON:) And do you have  
14 any evidence at all that suggests that Giant  
15 Eagle's corporate office did not monitor and did  
16 not know what its pharmacies were ordering from  
17 McKesson?

18 A. I think they did monitor that because  
19 they obviously were ordering them and making  
20 payments. So I think they were still aware of the  
21 levels of drugs that their pharmacies were  
22 receiving. They just weren't distributing.

23 Q. Right. And so -- but I thought you  
24 mentioned that they were violating the DEA  
25 regulations as a customer of McKesson because they

1 were not monitoring what their pharmacies were  
2 doing.

3 A. Well, the issue is that a level of  
4 prescribing continued, and maybe even escalated,  
5 after they stopped self-distributing. So the  
6 conduct, I don't believe -- I believe that the  
7 maintenance of effective controls would require  
8 them still to be responsible for what their  
9 pharmacies were purchasing from McKesson.

10 Q. Are you saying that Giant Eagle --  
11 well, let me -- did you or did you not examine  
12 Giant Eagle's dispensing levels for the drugs in  
13 question in this case?

14 A. Yes, sir.

15 THE REPORTER: I couldn't understand  
16 if you said yes, sir or no, sir.

17 A. I said yes, sir.

18 Q. (BY MR. LIVINGSTON:) Isn't it true  
19 that Giant Eagle's dispensing of the drugs in  
20 question in this case decreased over time starting  
21 in 2012?

22 A. I would have to go to my report to  
23 look at least to the chart or some of the McCann  
24 charts. So off the top of my head, I don't -- I'm  
25 not sure on that, just sitting off the top of my

1 head, Mr. Livingston.

2 Q. Isn't it true that Giant Eagle's  
3 dispensing of the drugs in question in this case  
4 went down at -- at the same time that the DEA  
5 quotas for many of these drugs were actually  
6 increasing?

7 A. Hold on. Let me look at my report.  
8 (Pause.)

9 A. Looking at the charts in my report, I  
10 do not agree with you, Mr. Livingston, on that.

11 Q. (BY MR. LIVINGSTON:) What reports --  
12 charts are you referring to?

13 A. Looking at the Lake County on Page  
14 152. I guess there would be a slight decrease. I  
15 wouldn't call it a significant decrease. And then  
16 on Page 151, 150, I would say there may be a slight  
17 decrease.

18 Q. Well, Mr. Rafalski, you realize that  
19 these charts that Dr. McCann produced relate to  
20 distribution, correct?

21 A. Yes.

22 Q. They don't -- these are not  
23 dispensing charts, correct?

24 A. Well, I think if they were  
25 distributed to the pharmacies, they were dispensed.

1           Q.       Well, for example, there's nothing in  
2       2015 and '16 on these two charts on 152, correct?

3           A.       That's correct.

4           Q.       And that is because Giant Eagle  
5       wasn't distributing during that period at all,  
6       correct?

7           A.       That's correct.

8           Q.       And there's no indication here as to  
9       what was happening with the DEA quotas, correct?

10           MS. KNIGHT: Mr. Livingston, it is  
11       getting hard to hear you.

12           Q.       (BY MR. LIVINGSTON:) There's no  
13       indication on the charts on Page 152 what was  
14       happening simultaneously with the DEA quotas for  
15       these drugs?

16           A.       I agree.

17           Q.       And that was my previous question  
18       was: Comparing Giant Eagle's dispensing levels  
19       year over year to the changes in the DEA quotas,  
20       neither you nor Dr. McCann did that analysis,  
21       correct?

22           A.       That is correct. We did not do the  
23       analysis and compare it with quotas that were  
24       issued.

25           Q.       All right. Would you go to Page 7 of

1 your report in Exhibit 2? Do you see this is where  
2 you say that the defendants' supposedly  
3 noncompliant SOM systems, which you characterize as  
4 sort of systemic failures, were a "Substantial  
5 cause of the opioid epidemic plaguing the country  
6 and specifically in Lake County and Trumbull  
7 County"; do you see that?

8 A. Yes, sir.

9 Q. That is your opinion, correct?

10 A. It is.

11 Q. And what do you mean by substantial?

12 A. I mean it wasn't a close call. It  
13 was obvious.

14 Q. Well, what about in comparison to  
15 others that contributed to the opioid crisis in  
16 these two counties?

17 A. What others are you speaking of,  
18 Mr. Livingston?

19 Q. Well, we talked about it earlier.  
20 You didn't analyze what the big three distributors'  
21 contribution, if anything, was to the opioid crisis  
22 in these counties, correct?

23 A. That's correct.

24 Q. You didn't look at any pill mill  
25 doctors who were writing illegal scripts for

1       opioids in those two counties, did you?

2               A.       That's correct.

3               Q.       You didn't look at any independent  
4       pharmacies who were ultimately shut down for  
5       writing illegal scripts in these two counties,  
6       correct?

7               A.       That's correct.

8               Q.       You didn't look at what the amount of  
9       theft from medicine cabinets or what have you after  
10       scripts were filled in -- legitimate scripts were  
11       filled in those two counties for opioids, correct;  
12       you didn't try to figure that out?

13              A.       That is correct, Mr. Livingston,  
14       because I wasn't asked to form an opinion on those  
15       things.

16              Q.       And you weren't asked to look at what  
17       contribution, if any, manufacturers of opioids made  
18       by any conduct that they were responsible for,  
19       including their marketing efforts, correct?

20              A.       Not contained within this specific  
21       opinion, that is correct.

22              Q.       And in order to contribute to the  
23       opioid epidemic in these two counties, the  
24       defendant pharmacies had to have had problems at  
25       the pharmacy level, correct?

1 MS. KNIGHT: Objection to form.

2 A. I do not disagree with that  
3 statement.

4 Q. (BY MR. LIVINGSTON:) Right. I mean  
5 just, this is, I think, pretty simple logic that  
6 your focus was entirely on the defendants' conduct  
7 as distributors, correct?

8 A. In concert with the distribution to  
9 their pharmacies, yes.

10 Q. And even if the defendants were, you  
11 know, as you claim, not doing a good job of  
12 complying with DEA regulations at the distribution  
13 level, if their pharmacies were exemplary  
14 pharmacies with respect to controls against  
15 diversion, and their pharmacies were doing  
16 everything that a good pharmacy should be doing, at  
17 the end of the day, there's -- it doesn't matter,  
18 because there's not going to be any diversion as a  
19 result of what the pharmacies were doing at the  
20 distribution level, correct?

21 MS. KNIGHT: Object to the form.

22 A. Well, in that hypothetical, because  
23 of the failures of the company, and not doing due  
24 diligence and not providing me with the information  
25 to see that that was actually accurate, there's no

1 way that I could use that to formulate my opinion.

2 Q. (BY MR. LIVINGSTON:) No, we already  
3 know -- we have already covered, you are not  
4 offering the jury any opinions about the  
5 defendants' conduct as pharmacies; you didn't look  
6 at it, and it is not in your report, and you are  
7 not going to testify about it.

8 I am just saying that, as a matter of  
9 logic, unless the defendants were doing something  
10 wrong at the pharmacy level -- if they were doing  
11 everything they were supposed to be doing,  
12 exercising their corresponding duty, they had good  
13 controls against theft, you know, whatever you want  
14 to dream up, come up with your dream pharmacy with  
15 respect to anti-diversion measures, if that is the  
16 case, then at the end of the day, it doesn't matter  
17 what their warehouses are doing with respect to  
18 compliance because those drugs are not going to end  
19 up being diverted, correct?

20 MS. KNIGHT: Objection to form.

21 A. I don't agree with that hypothetical.  
22 That is why the regulations are in place to  
23 operate -- I mean to design and operate a SOMs.  
24 And that is why there's due diligence in effect.  
25 And I don't think -- if I understand your

1     hypothetical, you are saying that essentially, the  
2     drugs don't need to be monitored if all of the  
3     pharmacies are perfect.

4                     And I don't think that is actually  
5     what occurred in this case. So I just don't agree  
6     with that hypothetical.

7             Q.       (BY MR. LIVINGSTON:) You are  
8     fighting my hypothetical. Let me make it even  
9     simpler.

10                    Okay. I am not suggesting that if  
11     the pharmacies aren't complying with the  
12     regulations that they are supposed to as  
13     distributors, they can't get letters of  
14     admonishment, get fined, get in trouble with the  
15     DEA. I'm not saying that. I am just saying that  
16     in terms of contributing to diversion in a  
17     particular area, which is your opinion that you  
18     have in your report on Page 7, that can't happen  
19     and won't happen if, despite their noncompliance as  
20     distributors, they are doing everything that a good  
21     pharmacy is supposed to do and there is no  
22     diversion going on at their pharmacies, correct?

23                    MS. KNIGHT: Object to form.

24             A.       Well, in regards to that  
25     hypothetical, I guess before I comment on it, in a

1 perfect world, I don't think that your hypothetical  
2 is possible. But in listening to your  
3 hypothetical, if everything was absolutely perfect  
4 with every pharmacy, then it is, hypothetically,  
5 potentially it could be true.

6 Q. (BY MR. LIVINGSTON:) Now, when you  
7 try to analyze whether a distributor is complaining  
8 with the SOM regulation, you have to look at the  
9 nature of the -- of the distributor's business,  
10 correct? That is right in the regs, you are  
11 supposed to take those sorts of things into  
12 consideration?

13 A. Generally I agree with that, yes,  
14 sir.

15 Q. And that is why the DEA -- you know,  
16 there's no one-size-fits-all for SOM regulations,  
17 correct?

18 A. I believe we touched on that earlier.  
19 I believe that is why the regulation is good as it  
20 stands, because it allows the ability for a  
21 registrant to design their own system to meet their  
22 own needs and their own customer base, and it is  
23 fluid and allows them to change it. I don't think  
24 there's a one-size-fits-all that could ever handle  
25 the totality of distributor activities in there.

1           Q.       Now, no matter how many times we look  
2       at the DEA's some regulation, we won't find any of  
3       the seven methodologies that you asked Mr. --  
4       Dr. McCann to use when he crunched the data,  
5       correct?

6           A.       The DEA regulations never contained a  
7       methodology or an algorithm.

8           Q.       Okay. And, in fact, the DEA doesn't  
9       even require that a registrant have an automated  
10      threshold system. They can use a manual system if  
11      they desire?

12          A.       If they can -- if it can be designed  
13      and operated and identify suspicious orders, yes,  
14      sir.

15          Q.       Okay. When you were inspecting  
16      distributors, you know, while you were with the  
17      DEA, did you ever recommend to any of them that  
18      they use any of the methodologies that you are now  
19      embracing in your report?

20          A.       No, sir. It would have been improper  
21      for me to do that. I think the farthest guidance,  
22      probably the only guidance I can recall is there  
23      was a period of time when the HDMA had a suspicious  
24      order monitoring draft or a guide policy, and I  
25      wouldn't direct a registrant to that, especially a

1 new registrant. But I may say that if they did  
2 some Google research, they may get some good ideas  
3 off the internet. But I never specifically  
4 directed any registrant to any type of a suspicious  
5 order monitoring system.

6 Q. Okay. Now, the results that  
7 Dr. McCann came up varied greatly for each one of  
8 the defendants under the methodologies that you  
9 gave him to use, correct?

10 MS. KNIGHT: Object to form.

11 A. In your question, are you asking me  
12 the results varied greatly?

13 Q. (BY MR. LIVINGSTON:) Yes, the  
14 results.

15 A. Yes.

16 MR. LIVINGSTON: Let's go to  
17 Exhibit -- Giant Eagle Exhibit 24.

18 (GE Exhibit 24 was marked for  
19 identification.)

20 Q. (BY MR. LIVINGSTON:) This is a chart  
21 that we had our version of a Dr. McCann put  
22 together which is just really taking the results  
23 from his report and your report for Giant Eagle.  
24 This is a comparison of the methodologies for  
25 flagging distribution orders, you know, seven

1 methodologies that you use. And here are the  
2 numbers that were flagged for hydrocodone for Giant  
3 Eagle's pharmacies in Lake County.

4 And do you see that, depending on  
5 which flavor you pick, the numbers go anywhere from  
6 zero percent to a hundred percent, correct?

7 A. I agree. I see that.

8 Q. Yeah. And that is -- I mean this is  
9 an accurate comparison of the results that you  
10 relied on, correct?

11 A. Well, if this is your expert that  
12 prepared this --

13 Q. All they did was cut and paste it  
14 from Dr. McCann. We can go back. Don't these  
15 results look familiar to you?

16 A. I would have to go to the charts.  
17 Not off the top of my head. I don't memorize them.  
18 I'm not disputing you, but if you wanted, I would  
19 have to compare them to his results. These are bar  
20 graphs. I think mine are in actual percents and  
21 numbers.

22 Q. Right. We wanted to make this a  
23 little easier for the jury to see.

24 You would agree that if these numbers  
25 are correct, that the error rate, depending on

1     which methodologies you pick, is a thousand  
2     percent, from zero per percent to one hundred  
3     percent?

4                     MS. KNIGHT:  Objection to form.

5             A.       I don't think there is an error rate.

6             Q.       (BY MR. LIVINGSTON:)  Well, there's a  
7     difference of a thousand percent?

8             A.       There's a difference based on the  
9     type of methodologies, but I don't think error  
10    rate.

11            Q.       And you would agree that after  
12    hearing all the evidence if the jury decides that  
13    methodologies C and D are the proper methodologies  
14    that Giant Eagle should have been employing, then  
15    Giant Eagle did not substantially contribute to the  
16    opioid crisis because there were no suspicious  
17    orders that were flagged, correct?

18            A.       I do not agree with that, and I don't  
19    know that it is proper for me to say what the jury  
20    or the judge will say.

21                    Just so you are clear, as I applied  
22    the methodologies to the transaction data, I picked  
23    the methodologies based on their uses that I  
24    identified through the litigation, and I applied  
25    them to the transaction.

1                   It is up to the judge or the jury to  
2                   make a decision upon reviewing the methodologies.

3                   Q.       Of course. And that is why I asked  
4                   you to, in a hypothetical fashion, assuming at the  
5                   end of the day that the jury concludes that the C  
6                   and D methodologies are the gold standard for  
7                   distributors, you would have to agree, sir, that  
8                   because no suspicious orders at all are identified  
9                   under those methodologies, that you would not --  
10                  that Giant Eagle could not have contributed to the  
11                  opioid crisis in Lake County?

12                  A.       I would not agree because if the jury  
13                  were to hear me, I would opine on C and D as being  
14                  highly ineffective in that you would take an  
15                  average of the usual and multiply it by three times  
16                  to identify an unusual. I think I have been  
17                  consistent in being critical of the two and three  
18                  times multiplier used on --

19                  Q.       Yeah. So you are fighting the  
20                  hypothetical, and that is why I think we are  
21                  struggling to get an answer here.

22                            So the hypothetical is, assume that  
23                            they reject your view that C and D methodologies,  
24                            though you included them in your report and  
25                            Dr. McCann included them, they reject your view

1     that apparently these are not very good  
2     methodologies. And they decide that they are not  
3     just good but the best methodologies and the ones  
4     that the DEA should apply to registrants like Giant  
5     Eagle.

6                     In that situation, sir, wouldn't you  
7     agree that Giant Eagle would not have substantially  
8     contributed to the opioid crisis in Lake County?

9             A.       No.

10            MS. KNIGHT: Object to form.

11            A.       I do not agree.

12            Q.       (BY MR. LIVINGSTON:) Let's just take  
13     a look at the next page, just so that we -- I just  
14     want to quickly -- this is the same sort of  
15     comparison --

16            A.       What page are you speaking of,  
17     Mr. Livingston?

18            Q.       Actually, I wanted you to go to  
19     Page -- -- the third page, actually, "Flagged  
20     Orders of Hydrocodone for Trumbull."

21                     SPECIAL MASTER COHEN:  
22     Mr. Livingston?

23                     MR. LIVINGSTON: Yes.

24                     SPECIAL MASTER COHEN: I'm sorry to  
25     interrupt. This is David Cohen. It looks like you

1 are in a conference room, and the microphone is  
2 very directional. So when you are looking down, we  
3 barely can hear you. I just want to make sure that  
4 the jury can hear you when this is played. So if  
5 you will kind of think about facing the microphone  
6 when you speak, I think it will really help  
7 everybody.

8 MR. LIVINGSTON: I appreciate that,  
9 Special Master Cohen. I will try to do that.

10 Q. (BY MR. LIVINGSTON:) Yeah, do you  
11 see that this is a similar comparison for Trumbull  
12 County?

13 A. I do, yes, sir.

14 Q. And we are not getting anymore  
15 consistency here; we still go from zero to a  
16 hundred percent, correct?

17 (Pause.)

18 Q. (BY MR. LIVINGSTON:) Correct?

19 A. I answered yes, sir.

20 Q. Oh, I'm sorry. I didn't hear you.

21 All right. Now, let's go to Exhibit  
22 10. Giant Eagle, 10.

23 (GE Exhibit 10 was marked for  
24 identification.)

25 Q. (BY MR. LIVINGSTON:) And Exhibit 10

1 is an indexed comparison of growth in hydrocodone  
2 product DEA quotas in dispensing -- in comparison  
3 to the Giant Eagle dispensing changes for these --  
4 for this drug in Lake and Trumbull Counties in MME.  
5 Now, again, I know that you just testified that you  
6 and Dr. McCann did not do this analysis. And I  
7 understand obviously you have never seen this  
8 before.

9 But assuming that our data  
10 consultants knew what they were doing when they put  
11 this together, you would agree here that this chart  
12 shows a significant decrease over time in Giant  
13 Eagle's dispensing of hydrocodone products starting  
14 after 2012, as I indicated earlier, correct?

15 MS. KNIGHT: Objection to form.

16 A. That is what this chart would  
17 indicate.

18 Q. (BY MR. LIVINGSTON:) And in fact,  
19 the decreases over time were going down faster than  
20 the DEA quotas?

21 MS. KNIGHT: Objection to form.

22 A. If this is accurate, I would agree  
23 with that statement.

24 Q. (BY MR. LIVINGSTON:) Yeah. I mean  
25 just for example, let's take 2013, the difference

1 in 2012, the DEA quota for hydrocodone went up over  
2 twenty-five -- roughly twenty-five percent while at  
3 the same time, there was a significant decrease in  
4 the dispensing of hydrocodone by Giant Eagle's  
5 pharmacies in Lake and Trumbull Counties, assuming  
6 that this data is correct?

7 MS. KNIGHT: Object to form.

8 A. That is what this chart would  
9 illustrate.

10 Q. (BY MR. LIVINGSTON:) Yeah, and even  
11 if we fast forward to a year a little closer in  
12 time, from 2018 to '19, the DEA quota either went  
13 up slightly or looks like right about -- stayed  
14 right about the same, while at the same time there  
15 was again a decrease in the dispensing of this drug  
16 by Giant Eagle's pharmacies in these counties,  
17 correct?

18 A. Specific to these counties, that is  
19 what this chart would depict, if it is accurate,  
20 sir.

21 Q. And, sir, if you -- you didn't know  
22 anything about Giant Eagle, and I showed you this  
23 and I said, you know, what do you think this  
24 suggests to you, wouldn't you agree that, standing  
25 alone, without -- you know, I know there's a lot of

1 other things we have got to look at, but just  
2 looking at this chart, this would suggest to you  
3 that Giant Eagle's pharmacies are good pharmacies  
4 that have proper controls and they are not engaged  
5 in massive diversion, correct?

6 A. I couldn't draw that conclusion from  
7 looking at this.

8 Q. Let me just -- you have examined or  
9 you did examine when you were a DEA inspector many  
10 pharmacies, correct?

11 A. I don't know that I would  
12 characterize it many, but as part of my job I have  
13 done that, yes, sir.

14 Q. Well, just for example, you examined  
15 SafeScript, right?

16 A. That is correct.

17 Q. And that turned out to be a bad  
18 pharmacy, correct?

19 A. That's correct.

20 Q. And when you investigate a  
21 potentially a bad pharmacy, there are certain  
22 things you look for, certain factors that you  
23 consider to try to determine whether you have got a  
24 good pharmacy or a bad pharmacy on your hands,  
25 correct?

1           A.       Yes. But I am not sure how you are  
2 drawing a correlation to the chart. But when I  
3 look at this chart, just for informational  
4 purposes, I do see an escalation of the dispensing  
5 of hydrocodone by the Giant Eagle pharmacies,  
6 leading up to 2012 when many declines occurred  
7 throughout the industry. So that would be a  
8 concern, the years of 2009, '10, 11, exceeding the  
9 quota, comparison quota. So that also would be  
10 alarming to me or would be of concern to me.

11           Q.       What factors would you look at --  
12 look for to try to determine whether you have a  
13 good pharmacy or a bad pharmacy?

14           A.       I would look at ordering patterns and  
15 I would look at -- I would review prescribing  
16 patterns, prescriber patterns. That would be a  
17 preliminary.

18           Q.       What about, you know, Oxy A, that is  
19 a high dose form of oxycodone --

20                   MS. KNIGHT: Let him finish.

21           A.       I wasn't quite finished, sir, I am  
22 sorry.

23                   I would look at the types of drugs  
24 that were dispensed in relation to all drugs. I  
25 would look at all drugs compared to controlled

1 substances. I would look at cash and noncash  
2 payments. I would look at the volume. I would  
3 look at the geographic area. I would look at other  
4 pharmacies nearby. I would look at a bunch of  
5 different factors in helping to draw a conclusion  
6 on that issue we are talking about.

7 Q. (BY MR. LIVINGSTON:) Okay. And I  
8 think -- I already know the answer, but you didn't  
9 look at any of these factors with respect to any of  
10 the pharmacies in this case, correct?

11 A. I wasn't asked to provide an opinion  
12 on pharmacies, so I did not.

13 Q. Yeah. No, I don't care why you  
14 didn't. I just want to know whether you did or you  
15 didn't. You did not, correct?

16 A. I said I did not.

17 MS. KNIGHT: Asked and answered.

18 A. I was not asked to.

19 Q. (BY MR. LIVINGSTON:) Now, controls,  
20 one of the things you suggested was your percentage  
21 of controls versus noncontrols, correct?

22 A. That's correct, sir.

23 Q. And I think SafeScript, didn't they  
24 have like ninety percent controls?

25 A. Yes. But I don't know the exact

1 number. But they were heavy on the controls.

2 Q. I mean they were like almost off the  
3 charts, right? Correct?

4 A. I don't know if I agree with that. I  
5 think as a business model, they were focusing on  
6 dispensing controlled substances.

7 Q. Well, that was one thing, their high  
8 percentage of controls suggested to you that they  
9 were a problem pharmacy, correct, when you  
10 investigated them?

11 A. That was an indicator to me that it  
12 was a possible problem. It wasn't definitive --  
13 (Reporter clarification.)

14 A. It wasn't definitive that it was  
15 actually problematic until I evaluated it.

16 Q. (BY MR. LIVINGSTON:) Okay. What  
17 percentage does the DEA use or did you use  
18 personally, if it is different than the DEA, that  
19 would cause you to have some concerns about  
20 controls? I mean at what point, what level of  
21 controls versus noncontrols did you start to get  
22 concerned?

23 A. Well, it changed over the years.  
24 Early -- early in my career, it would probably be  
25 somewhere around five to twelve percent of controls

1       versus noncontrols. And then as time went by, up  
2       until 2012, it might get up as close as into the  
3       twenties. And just based on the prescribing and  
4       dispensing of controlled substances. And it  
5       wouldn't just be opioids; it would be all controls.

6                       But it would generally be around  
7       twenty at the height. Unless there was some kind  
8       of a reason that they were a specialty pharmacy,  
9       they had contracts or special relationships that  
10      were verified to be legitimate, that number could  
11      be higher. We are just talking a general,  
12      full-service pharmacy.

13               Q.       Yeah. So I just want to make sure I  
14      understand. You are saying that roughly around  
15      twenty percent, if it was more than twenty percent,  
16      you would start to get concerned about the level of  
17      controls versus noncontrols?

18               A.       I guess concern could be a good word.  
19      It would be something that I might look at a little  
20      closer, and that would be at the height.

21               Q.       Well, what was the average level of  
22      controls versus noncontrols? Was that something  
23      that you knew when you were a DEA inspector?

24               A.       Yeah, there would be published  
25      reports or there would be information available or,

1 in talking to -- you know, generally I relied some  
2 on the state level Board of Pharmacy director, he  
3 would give some levels and standards of what they  
4 were seeing.

5 So -- and it isn't definitive. It is  
6 just kind of a generalization. Also I looked at  
7 many, many questionnaires that -- back when I was  
8 employed that distributors received from  
9 pharmacies. And they listed percents there. So it  
10 was an on to job plus publications.

11 Q. I think Mr. Wright provided testimony  
12 on behalf of the DEA in this litigation. Did you  
13 review his testimony?

14 A. No -- I believe I might have read his  
15 transcript. I don't recall what he testified into  
16 this subject.

17 Q. He said twenty percent. Does that  
18 ring a bell to you?

19 MR. FULLER: Counsel, I am just going  
20 to note an objection for the record that Mr. Wright  
21 didn't provide testimony on behalf of DEA. I  
22 believe he was deposed, but he wasn't a 30(b) for  
23 the DEA.

24 Q. (BY MR. LIVINGSTON:) In any event,  
25 with that objection, do you recall that Mr. Wright

1 testified that twenty percent was sort of the  
2 standard that the DEA applied?

3 MS. KNIGHT: Objection to form.

4 A. What time frame was that,  
5 Mr. Livingston, unless you have the transcript that  
6 I can review?

7 Q. (BY MR. LIVINGSTON:) Yeah, why don't  
8 you go to 17, Giant Eagle 17, Page 260 to 61.

9 (GE Exhibit 17 was marked for  
10 identification.)

11 Q. (BY MR. LIVINGSTON:) Starting on  
12 Line 13 on 260, he was asked, "Is it accurate to  
13 say that you knew that it was common for legitimate  
14 pharmacies to have a ratio of approximately twenty  
15 percent of controlled to eighty percent  
16 noncontrolled."

17 "In that area, yes."

18 "And higher percentages of controlled  
19 drugs could be reasonable at times, right?"

20 "Yes."

21 "For example, pharmacies located  
22 right next to a cancer clinic or something like  
23 that?"

24 And the answer was "correct."

25 Does that refresh your recollection

1 as to Mr. Wright's testimony on this issue.

2 MS. KNIGHT: Objection to form. He  
3 didn't say he didn't remember it.

4 A. I read the testimony and I don't  
5 disagree, but it doesn't contain a time frame. So  
6 I am not aware of what time frame Mr. Wright is  
7 speaking to. I am aware that earlier in my career,  
8 2005, '6, '7, these numbers weren't that high, at  
9 least in Michigan where I was a diversion  
10 investigator.

11 Q. (BY MR. LIVINGSTON:) And you know  
12 Mr. Rannazzisi, you have heard of him?

13 A. I have.

14 Q. And who is Mr. Rannazzisi.

15 MS. KNIGHT: Rannazzisi.

16 Q. (BY MR. LIVINGSTON:) I'm sorry. If  
17 I mispronounced it, I apologize. Do you know who  
18 he is?

19 A. Yeah, he was the head of diversion  
20 for a period of years. I don't remember exactly  
21 when he started. 2005, I think. I started in '04.  
22 I think it was after I started. He was -- for the  
23 better part of my career, he was the head of the  
24 diversion within the DEA.

25 Q. Yeah. Do you think he knew what he

1 was talking about when he gave testimony relating  
2 to DEA regulations and issues?

3 MS. KNIGHT: Objection to form.

4 A. I am always cautious about saying  
5 what somebody else knew or didn't know. I mean he  
6 is highly educated. He was in a high level  
7 position. So I don't have any reason to not  
8 believe what he said.

9 Q. (BY MR. LIVINGSTON:) When you were  
10 at the DEA, he was the boss of your bosses,  
11 essentially, right?

12 A. Yes. The head of diversion within  
13 the DEA.

14 Q. All right. Why don't we turn to  
15 Exhibit 32.

16 (GE Exhibit 32 was marked for  
17 identification.)

18 Q. (BY MR. LIVINGSTON:) Do you know  
19 that he is now an expert, he has provided expert  
20 testimony on behalf of the plaintiffs in other  
21 opioids cases? Are you aware of that?

22 A. I am aware that he has been doing  
23 that, yes, sir.

24 Q. Okay. So you guys are on the same  
25 team, right?

1 MS. KNIGHT: Objection to form.

2 A. I wouldn't characterize it as that.  
3 He does do the same similar work as I do.

4 Q. (BY MR. LIVINGSTON:) Well, if you  
5 turn to -- this is deposition testimony that he  
6 gave in the State of Ohio opioids case. On Page  
7 302, and he says, "And what is the percentage that  
8 tells you if someone is diverting?"

9 "Well, it depends. I would say  
10 anything -- it used to be that the standard was a  
11 pharmacy generally had between nine and twelve -- I  
12 think nine and twelve percent controls versus  
13 legend drugs dispensing. I would say, you know,  
14 extend it out maybe thirteen, fourteen percent,  
15 maybe fifteen percent, but I wouldn't go any higher  
16 than that."

17 So it sounds like he is using fifteen  
18 as the cutoff. Do you think that is a reasonable  
19 cutoff?

20 A. Depending on the time frame, I don't  
21 think it is unreasonable and depending on what the  
22 geographic location is.

23 Q. Well, let's not, you know, speculate  
24 about the appropriate time frame. The appropriate  
25 time frame for this case apparently is 2006 to the

1 present, correct?

2 A. Yes.

3 Q. Okay. During that time frame, is  
4 fifteen percent -- is that a reasonable number to  
5 use for when you should start to get concerned  
6 about whether there's diversion going on at a  
7 pharmacy?

8 A. I don't think it is unreasonable.  
9 Again, I'm just going to say unless there's some  
10 kind of other reason for it to be above that level,  
11 a justifiable reason.

12 Q. And then you also mentioned looking  
13 at cash transactions, correct?

14 A. That would be another one of the  
15 factors.

16 Q. What was the percentage, the usual  
17 percentage that a good pharmacy would have of cash  
18 transactions for controlled substances?

19 MS. KNIGHT: Objection to the form.

20 A. I think it -- and I'm not drawing a  
21 direct -- I haven't really dealt with this topic  
22 recently. I believe it would be low -- lower than  
23 twenty percent. Just generally speaking.

24 Q. (BY MR. LIVINGSTON:) Okay. Fair  
25 enough. Would you go to Exhibit, Giant Eagle

1 Exhibit 18?

2 (GE Exhibit 18 was marked for  
3 identification.)

4 Q. (BY MR. LIVINGSTON:) All right. So  
5 again we had our version of Dr. McCann prepare this  
6 chart which is really just the total prescriptions  
7 and the number of controlled prescriptions on a  
8 percentage basis for each of Giant Eagle's  
9 pharmacies located in Lake and Trumbull Counties  
10 from 2006 to -- through November of 2019.

11 And do you see that the average  
12 percentage for all these pharmacies together was  
13 only 9.8 percent? Do you see that?

14 A. I see that, if it is correct.

15 Q. Assuming that our data consultants  
16 did their math right, you would agree that this  
17 would not -- would have not raised any eyebrows for  
18 you when you were a DEA diversion investigator?

19 A. Depending on the distribution of the  
20 type and strength of drugs.

21 Q. Well, I thought we just talked about  
22 how, you know, anywhere from fifteen to twenty  
23 percent would be where your eyebrows would start to  
24 go up, and now we are looking at 9.8 percent.  
25 Isn't that less than the cutoff you just testified

1 about?

2 MS. KNIGHT: Objection to the form.

3 A. Yeah. But I think in the totality of  
4 my answer, I think that was one of the factors was  
5 the percentage or within the percent of these. For  
6 example, Newton Falls maybe could be all oxycodone  
7 thirty milligram tablets. Just hypothetical.

8 (Reporter clarification.)

9 A. So I would agree, looking at the  
10 percents, I don't see one here that is alarming,  
11 but that is not definitively saying it is a good  
12 pharmacy.

13 Q. (BY MR. LIVINGSTON:) Well, I think  
14 our data consultants might have guessed where you  
15 were going with your testimony. So let's go to  
16 Exhibit 20, Giant Eagle Exhibit 20.

17 (GE Exhibit 20 was marked for  
18 identification.)

19 Q. (BY MR. LIVINGSTON:) Do you see this  
20 is a market share analysis of Giant Eagle's  
21 opioids -- all opioids -- for all opioids at issue  
22 in this case versus the Oxy 30s or greater. That  
23 is what you just mentioned, right, the Oxy 30s;  
24 that is a higher dose Oxy?

25 A. Yes. But just for clarification,

1     that was an example. I am not saying the  
2     application is here in these two counties. I would  
3     look for any unusual dispensing of an opioid when  
4     compared to other opioids. That is a more broader  
5     statement than just saying Oxy 30s, oxycodones 30s.  
6     Any of the opioids could be abused.

7             Q.       (BY MR. LIVINGSTON:) Isn't it true,  
8     sir, that you, when you were a DEA inspector, would  
9     look at higher -- high percentages of higher dose  
10    opioids scripts as a potential indicator of  
11    diversion?

12            A.       Not necessarily. I would look for an  
13    unusual amount of any type of an opioid. The  
14    diversion tended at certain time frames to go to  
15    certain strengths, but that doesn't eliminate the  
16    fact that in certain geographic regions there were  
17    certain pills that were more desirable.

18            Q.       Right. Well, isn't it true, sir,  
19    that you specifically focused on Oxy 80s with  
20    respect to the SafeScript pharmacy when you  
21    investigated and ultimately gave testimony against  
22    that pharmacy?

23            A.       Yes, but it wasn't just by looking at  
24    documents or by that. It was partly identified  
25    through the investigation.

1           Q.       All right. We will get to SafeScript  
2       in some detail a little bit later.

3                    But just if you look here, you will  
4       see that Giant Eagle's share in Lake and Trumbull  
5       County for all opioids at issue was 16.6 percent,  
6       but its share for the high dose oxycodone types of  
7       solids was only 4.02 percent. 1/4 of its market  
8       share for opiates. Do you see that?

9                    MS. KNIGHT: Objection to the form.

10          Q.       (BY MR. LIVINGSTON:) Do you see  
11       that?

12                   MR. FULLER: Counsel, just so I  
13       understand, this is comparing different dosages to  
14       the entire market share for the respective counties  
15       and not necessarily the pharmacy within itself?

16                   MR. LIVINGSTON: Right. These are  
17       all of Giant Eagle's pharmacies collectively.  
18       Nondefendants include all the nondefendant  
19       pharmacies, and co-defendants include all the  
20       defendants except for Giant Eagle.

21                   MR. FULLER: Got it. Thank you.

22          A.       I see that is what this chart  
23       indicates.

24          Q.       (BY MR. LIVINGSTON:) And just  
25       looking at this chart alone without looking at any

1 other factor, you would agree that this suggests  
2 that diversion is less likely, not more likely,  
3 correct?

4 MS. KNIGHT: Object to the form.

5 A. I couldn't draw that conclusion just  
6 from looking at this chart.

7 Q. (BY MR. LIVINGSTON:) Well, this  
8 wouldn't raise an eyebrow, would it? You are  
9 looking at a company that normally has sixteen  
10 percent share of all opioids, and then it only has  
11 a four percent share of high dose. This certainly  
12 isn't going to cause you to immediately get on the  
13 phone and call your group supervisor up and say we  
14 have got a problem on our hands, right?

15 A. Well, just for clarification,  
16 diversion can occur at any percent. So it is not  
17 that you would look at this number and say that  
18 diversion is not occurring. If you are saying that  
19 this -- just strictly saying that they are  
20 distributing is a lesser amount of a certain type,  
21 I agree with what that chart says.

22 But I don't think this eliminates the  
23 ability to say that they are a good company or they  
24 are not -- there's no diversion.

25 Q. Why don't we go to Exhibit 19.

1 (GE Exhibit 19 was marked for  
2 identification.)

3 Q. (BY MR. LIVINGSTON:) You see that  
4 this is a Declaration of Diversion, Investigator  
5 James Rafalski, yourself, under penalty of perjury.  
6 You recall do giving this declaration?

7 A. I do.

8 Q. And I assume you were as honest as  
9 possible when you provided this declaration?

10 A. Yes, sir.

11 Q. And this was provided in connection  
12 with the SafeScript pharmacy case, correct?

13 A. Yes, sir.

14 Q. And this pharmacy was sort of  
15 involved in a conspiracy with some bad doctors; is  
16 that correct, or a bad doctor?

17 A. Yes, that is an accurate statement.

18 MS. KNIGHT: Can you hear him well?

19 Q. (BY MR. LIVINGSTON:) In paragraph 2,  
20 you indicate that -- when you describe SafeScript,  
21 you say that they were between October 2005 through  
22 May 2007, they were "dispensing illicit  
23 prescriptions (primarily 80 milligram OxyContin)  
24 issued by a physician engaged in illicit conduct  
25 outside the scope of professional practice." Do

1     you see that? Do you see that?

2             A.       Hold on a second. I am reading it,  
3     sir. Yes, I agree that is what it says.

4             Q.       Okay. And so the thing you focused  
5     on when you were investigating this pharmacy was  
6     their 80 milligram Oxy scripts, correct?

7             MS. KNIGHT: Object to form.

8             A.       That is accurate, Mr. Livingston.  
9     But it is because the investigation of the abuse or  
10    of the diversion was focused on that specific drug.  
11    Also, I believe through recollection there might  
12    have been some other Schedule IIs, but this is one  
13    of the primary drugs.

14            Q.       (BY MR. LIVINGSTON:) Okay. And if  
15    you would skip ahead to Page 33 of this document.  
16    You have a couple -- a chart on that page and also  
17    on Page 5. Do you see those charts?

18            A.       I do, sir.

19            Q.       And these are charts reflecting Oxy  
20    -- the number of Oxy tablets that were dispensed by  
21    this pharmacy during these periods of times,  
22    correct?

23            A.       Yes, sir.

24            Q.       And there's quite an increase here  
25    from January of 2006 to August of 2006 for

1 SafeScript, right? They go from eighteen hundred  
2 tablets to fifty-four hundred. That is like a  
3 triple increase there?

4 A. Yes, sir.

5 Q. And then if you go to Page 5, you  
6 will see an even more dramatic increase in Oxy  
7 scripts from fourteen hundred to sixteen hundred --  
8 one thousand six -- I mean sixteen thousand four  
9 hundred. So that is more than a tenfold increase  
10 over that relatively short period of time, correct?

11 A. Yes, sir.

12 Q. Now, you and Dr. McCann did not  
13 analyze Giant Eagle's dispensing of Oxy 80 or Oxy  
14 30, the higher dose Oxy scripts; is that correct?

15 A. The drugs were analyzed in families,  
16 so that is correct. It wasn't specific to any  
17 strength.

18 Q. And haven't you given -- haven't you  
19 informed registrants, other distributors, that they  
20 should be on the lookout for pharmacies that go  
21 over a thousand doses of eighty milligram Oxy in a  
22 given month when they start ordering more than  
23 that?

24 A. I don't ever -- I don't have a  
25 recollection of ever giving that guidance.

1           Q.       Well, didn't you have a buddy from  
2       the DEA, Jack Crowley, who was a Purdue employee?

3                   MS. KNIGHT:   Object to form.

4           A.       I don't characterize him as a buddy,  
5       but I am aware -- I know who Mr. Crowley is, yes.

6           Q.       (BY MR. LIVINGSTON:)   Well, he was a  
7       friend, wasn't he?

8           A.       I would say more of an acquaintance.

9           Q.       Well, did you work with him in the  
10       Detroit office?

11          A.       No.   He was -- as far as I knew, I  
12       think he was retired when I started working.

13          Q.       Well, why don't we look at Exhibit  
14       49.

15                   (GE Exhibit 49 was marked for  
16                   identification.)

17          Q.       (BY MR. LIVINGSTON:)   Do you see this  
18       is an email from -- well, from you to -- I'm sorry,  
19       to Jack Crowley from yourself.   It looks like a  
20       personal email, jralph1972@aol.com, dated April 19,  
21       2009?

22          A.       That's correct.

23          Q.       Okay.   Was it a matter of practice  
24       that you would conduct official DEA business using  
25       your personal email account?

1           A.       No. I think it was very limited. In  
2 fact, I don't recall outside of this ever doing it.  
3 I didn't have access to be able to generate emails  
4 outside of the office early in my career, and I was  
5 following up on something I was asked to do to get  
6 some information to Mr. Crowley, and I did it from  
7 this personal email.

8           Q.       Okay. So did you have -- create any  
9 other emails or exchange any other emails relating  
10 to DEA business from this or any other personal  
11 account at any point in time?

12          A.       I don't believe so. I mean it is a  
13 long time ago. Early -- I know early in my career,  
14 there -- they didn't have off-site abilities to do  
15 emails. But generally speaking, no contact with  
16 registrants, no guidance, no official business  
17 would have been conducted, although I guess this  
18 could be considered government business. I was  
19 asked to give him some guidance, and I did this  
20 through an email.

21          Q.       Right. Well, this email is about  
22 official government business. It is not about, you  
23 know, getting together for lunch, right?

24          A.       No. I agree. I said it was giving  
25 him some guidance.

1           Q.       Okay. And is this email account  
2 still active?

3           A.       It is.

4           Q.       And have you destroyed any of your  
5 old emails that are on this account that might have  
6 involved DEA business?

7           A.       I think it auto deletes now. So I  
8 think the answer to that would be yes.

9           Q.       And can you give us the background  
10 really quickly here about why you were  
11 corresponding with Mr. Crowley, who was at Purdue?

12          A.       My supervisor asked me -- let me read  
13 this one second. It has been a while since I saw  
14 this.

15                   It was my recollection that he was  
16 coming to Detroit and he was going to be visiting  
17 some pharmacies as a Purdue -- on behalf of Purdue.

18          Q.       What was Mr. Crowley's position at  
19 the time with Purdue?

20          A.       I know he was in compliance, but I  
21 don't know for sure, sir.

22          Q.       Okay. And you know that Purdue has  
23 pled guilty to doing some pretty nasty things with  
24 respect to opioids, correct?

25          A.       I am aware of that, and Mr. Crowley

1 was right at the middle of all that.

2 Q. And in the beginning, you say, "I'm  
3 sorry it took so long, but I have been extremely  
4 busy at work and have a couple projects going on at  
5 home. I read your proposed questions, and they are  
6 very detailed and comprehensive."

7 Where are those proposed questions?  
8 Are they on your email account, or have they been  
9 deleted?

10 A. They wouldn't have been on -- he  
11 wouldn't have emailed me at this account.

12 Q. So you are responding to an email you  
13 received from your email account at the DEA?

14 A. I don't recall even being emailed.  
15 It might have went to somebody else and I was given  
16 something in writing.

17 Q. Okay. And it says, "You definitely  
18 haven't lost your skills. I wish some of my fellow  
19 investigators were this thorough."

20 So, again, it sounds like you knew  
21 him pretty well; is that true?

22 A. We had a couple of conversations. I  
23 met him once in person. He was in the Detroit  
24 office. But I wouldn't say I knew him well. We  
25 had some phone conversations.

1           Q.       All right. So essentially,  
2       Mr. Crowley is asking you for some advice about  
3       when he -- when he investigates a pharmacy, you  
4       know, what he should look for as potentially signs  
5       that, you know, there's a problem, correct?

6           A.       Yes.

7           Q.       And then you -- you provided him with  
8       some guidance, correct?

9           A.       Yes.

10          Q.       And the first thing you say is you  
11       would want to observe the pharmacy for a while.  
12       You say, "I might also take some time and drive  
13       around the surrounding area. Generally in Detroit  
14       most of these problem pharmacies will have illegal  
15       sales or transfer of pills from the purchaser to  
16       someone outside. It is a fairly common activity."

17                   I mean are you essentially saying you  
18       want to be on the lookout for long lines of people  
19       who are zombie-like or out-of-state licenses in the  
20       parking lot of the pharmacy, that sort of thing?

21          A.       Yeah, generally speaking. I don't  
22       recall the names, but I recall the locations of a  
23       couple of the pharmacies, and they were a  
24       concerning area to go to in the city of Detroit.  
25       So I am just giving him some general guidance about

1       what he might observe in the parking lots.

2               Q.       And neither you nor Dr. McCann did  
3       anything like that, neither of you ever went to any  
4       of the pharmacies that are owned and operated by  
5       the defendants in Lake and Trumbull Counties,  
6       correct?

7               A.       That is a correct statement, sir.

8               Q.       And, to your knowledge, nobody --  
9       none of the other experts or nobody, to your  
10      knowledge, on plaintiffs' side did that, correct?

11              MS. KNIGHT:   Object to form.

12              A.       I do not know, sir.

13              Q.       (BY MR. LIVINGSTON:)   But to your  
14      knowledge, you are not aware of anyone, correct?

15              MS. KNIGHT:   Object to form.

16              A.       As I stated, I don't know if anyone  
17      did or did not do that.

18              Q.       (BY MR. LIVINGSTON:)   All right.   The  
19      next thing you list is "A good visual check of the  
20      pharmacy says a lot.   Pills, bottles, records  
21      laying all around and disorganization is the norm  
22      for most of the bad pharmacies."   Do you see that?

23              A.       Yes.

24              Q.       And again, this is not something that  
25      you and Dr. McCann or anyone else on the

1 plaintiffs' side, to your knowledge, did with  
2 respect to defendants' pharmacies. Nobody went  
3 around and made this kind of visual check and found  
4 this kind of evidence, correct?

5 MS. KNIGHT: Object to form. Asked  
6 and answered.

7 A. I did not do this, and I do not  
8 believe Dr. McCann did this. I can't speak for any  
9 other experts or consultants that were working for  
10 the plaintiffs. I do not have any knowledge  
11 whether they did or didn't.

12 Q. (BY MR. LIVINGSTON:) And then if you  
13 go further down, the next paragraph says, "If any  
14 of the distributor/suppliers have conducted  
15 investigations or collected data from the pharmacy,  
16 you may want to get more detailed information."

17 So you are basically suggesting that  
18 if the pharmacy is supplied by a distributor, you  
19 might want to talk to the distributor to see if  
20 they know anything about the pharmacy, correct?

21 A. Yes. I took particular interest in  
22 this because I was wondering if Mr. Crowley  
23 actually did this, what he would do with the  
24 information.

25 Q. Okay. Number 3 -- well, in this

1 case, if you were to make that inquiry, you would  
2 be talking to the corporate office of these  
3 pharmacies because they are all -- this is a  
4 self-distribution situation where all the  
5 pharmacies are owned by the same company, correct?

6 A. I am speaking about Mr. Crowley and  
7 his visit to Detroit.

8 Q. Right, yeah. Purdue is a  
9 manufacturer, so it is just a completely different  
10 situation, right?

11 A. Well, it is a distribution from a  
12 distributor to a pharmacy. It is not a chain, but  
13 it is the same business. But I will agree with  
14 you.

15 Q. Let's get to the more important  
16 paragraph, the next one. It says, "You may already  
17 know this, but a general pharmacy average for  
18 ordering the eighty milligram" -- you are referring  
19 to Oxy here, right, eighty milligram product?

20 A. Yes.

21 Q. -- "is approximately three hundred to  
22 one thousand dosages units per month. If any  
23 pharmacy you visit is ordering a larger amount and  
24 not proportionate to the OxyContin strengths, then  
25 you might want to investigate the totals more in

1 depth to ensure it is legitimate."

2 Do you see that?

3 A. Yes.

4 Q. So basically what you are telling  
5 Mr. Crowley to be on the lookout for is, hey, if  
6 you see that they are ordering, the pharmacy is  
7 ordering more than a thousand doses, you know, it  
8 is a red flag for you. And you might want to do  
9 your due diligence to see if there really is  
10 something amiss with the pharmacy, correct?

11 A. Conceptually, that would be a good  
12 description of doing due diligence, by looking at  
13 the distributions of strengths of drugs, I agree,  
14 yes.

15 Q. Right. And conversely you are  
16 telling Mr. Crowley that if the pharmacy has less  
17 than a thousand dosage units per month, and  
18 especially substantially less, then that shouldn't  
19 raise his eyebrow, that would not be a red flag,  
20 and he doesn't need to do any further due  
21 diligence?

22 MS. KNIGHT: Object to form.

23 A. I don't think it would completely  
24 preclude it, but generally speaking if it was much  
25 less, a hundred couple dosage units a month, I

1 would tend to agree with that statement.

2 Q. (BY MR. LIVINGSTON:) Now I would  
3 like you to turn to Exhibit 50.

4 (GE Exhibit 50 was marked for  
5 identification.)

6 Q. (BY MR. LIVINGSTON:) And again, this  
7 is something that our data consultants, using the  
8 data that has been produced in this case, the OARRS  
9 data, performed at our request. And this is  
10 basically the average monthly oxycodone eighty  
11 milligram dosage units dispensed by Overholts  
12 Pharmacy. Do you know who Overholts Pharmacy is?

13 A. It's -- yes, generally speaking.

14 Q. Who is Overholts?

15 A. Well, it's an independent pharmacy.  
16 I --

17 Q. And do you know what happened to  
18 Overholts?

19 MS. KNIGHT: Mr. Livingston, you need  
20 to let Mr. Rafalski finish his answer.

21 MR. LIVINGSTON: I'm sorry. I  
22 thought he was finished. I'm just trying to move  
23 it along.

24 MS. KNIGHT: Well, we've spent all  
25 morning talking about areas that he doesn't have

1 opinions on. You can let him finish his answer.

2 A. I recall seeing it on one of  
3 Dr. McCann's charts, and it's in either Lake or  
4 Trumbull County. I know it was a high dispenser,  
5 but other than that, I don't have any other  
6 information now with regard to what happened with  
7 that pharmacy.

8 Q. (BY MR. LIVINGSTON:) Well, Overholts  
9 was eventually shut down and its owner sent to jail  
10 for, you know, diverting opioids. But you see  
11 there that Overholts is well above your one  
12 thousand dosage units cutoff, correct?

13 A. It does -- the chart does say that.  
14 If it's accurate, I agree.

15 Q. Yeah. So if you were investigating  
16 Overholts, this would have been a red flag for you  
17 that they were well above your cutoff, correct?

18 A. It would have definitely required  
19 some scrutiny.

20 Q. Is okay. And if you -- do you know  
21 who the Franklin Pharmacy is, where that  
22 pharmacy --

23 A. I do not.

24 Q. Okay. That's another pharmacy that  
25 had some issues; in fact, McKesson cut them off at

1 some point. And they were also an independent  
2 pharmacy. And you see that they're also more than  
3 double above your cutoff; do you see that?

4 A. I do. But just -- just for  
5 clarification, I think my email to Mr. Crowley was  
6 a couple of years earlier. And I'm not so sure  
7 that as time went on, a thousand would have been --  
8 a thousand a month would have been accurate, as  
9 that use of that drug escalated rapidly, just  
10 pointing that out to you.

11 Q. Well, are you saying that the number  
12 would have gone up or down?

13 A. My number of a thousand would have  
14 went up.

15 Q. Okay.

16 A. Early guidance that I received first  
17 in Detroit would be oxycodone products. All  
18 oxycodone products in the year would have probably  
19 been under -- well, under probably ten thousand  
20 when I first started.

21 Q. Okay. In any event, so are you  
22 saying that maybe Franklin wouldn't have raised  
23 your eyebrows if you had investigated Franklin  
24 because the dosage cutoff was more than a thousand?

25 A. Just looking at the chart and seeing

1 those numbers, it would be outside of the norm, but  
2 that doesn't mean that it's diverting or there's  
3 some illicit conduct, although if it ranked high  
4 compared to all other pharmacies, it bears some  
5 scrutiny but there could be an explanation.

6 That's the essence -- interestingly,  
7 that's the essence of due diligence is to determine  
8 whether or not that the bar graphs like this are  
9 legitimate or illegitimate dispensing.

10 Q. We don't need to talk about  
11 nondefendants, but if we skip ahead, there's all  
12 defendants and then there's Giant Eagle by its  
13 lonesome. Do you see that all defendants is just a  
14 small fraction of the thousand dosage units cutoff  
15 that we've been speaking about?

16 A. Yes, but again, in this chart, we're  
17 talking about the eighty milligrams hydrocodone --  
18 or oxycodone tablets, so we had some other  
19 activities that occurred during the time frame.  
20 Had the reformulation of the oxycodone, OxyContin  
21 eighty milligram. That caused a huge shift to the  
22 thirty milligram oxycodone.

23 So there's other factors to  
24 determine. Looking at this specific drug over this  
25 wide time frame, it's concerning with the data that

1 we see there.

2 Q. But looking at this -- this metric  
3 alone, if you were to have looked at all defendants  
4 or Giant Eagles of dispensing of eighty milligram  
5 oxy during this time frame, that would not have  
6 raised any concerns on your part?

7 MS. KNIGHT: Object to the form.

8 A. I don't know that I would have ever  
9 looked at it in this manner. Again, that's a  
10 really wide time frame for the data, so I don't  
11 know how the data would change if we looked at each  
12 year.

13 I'm always cautious to just look at a  
14 chart and make some kind of assumptions or  
15 determinations. I mean Overholts generally -- I  
16 mean, Overholts would be a concern, obviously. But  
17 then I don't know what the time frame of  
18 Overholts's conduct is.

19 So just clarifying, just looking at a  
20 chart gives some indications, but it's not the  
21 strength that I think you're trying to apply to it  
22 in regards to the questions to me.

23 Q. (BY MR. LIVINGSTON:) Just turn to  
24 the next page on this exhibit, there's another  
25 chart, average monthly oxycodone eighty milligram

1 dosage units dispensed. This is for Giant Eagle's  
2 pharmacies in these two counties on a pharmacy by  
3 pharmacy basis.

4 And do you see that for the most  
5 part, most months for most pharmacies, literally  
6 there was -- there was not one dosage of -- dose of  
7 eighty milligram oxy that was dispensed and filled?  
8 Do you see that?

9 A. I see that's what these charts show.

10 Q. And again, just looking at this, if I  
11 just put this in front of you, said would this  
12 cause you any concern, you know, about this  
13 pharmacy, you would say no, this looks exemplary;  
14 this looks like this pharmacy is hardly involved in  
15 dispensing this drug at all, correct?

16 MS. KNIGHT: Object to form.

17 A. I don't know that I would use that  
18 terminology, but if I saw those dispensing numbers  
19 I obviously wouldn't rush to take a look at it, if  
20 that was your question.

21 Q. (BY MR. LIVINGSTON:) That was the  
22 question. Thank you for clarifying.

23 MS. KNIGHT: Mr. Livingston, when we  
24 get to a good breaking point, let me know. It  
25 would be great.

1 MR. LIVINGSTON: Okay. We're almost  
2 there.

3 Q. (BY MR. LIVINGSTON:) Now, you did  
4 make this comparison with respect to Safe Script.  
5 You looked at Safe Script's oxy dispensing compared  
6 to what other pharmacies were doing, correct? You  
7 specifically looked at that?

8 A. Yes, sir.

9 Q. Okay. That's the exercise we just  
10 went through. We looked at how much some of the  
11 independents were dispensing, all defendants,  
12 nondefendants, Giant Eagle, right, we just went  
13 through that exercise?

14 MS. KNIGHT: Objection to form.

15 A. Yes, but again, it's just one  
16 specific drug for a broad timeline. So it's a very  
17 limited picture of the activity of the pharmacy.

18 Q. (BY MR. LIVINGSTON:) Did you review  
19 any of the testimony in this case that was provided  
20 under oath by several Ohio Board of Pharmacy agents  
21 who were responsible for Lake and Trumbull  
22 Counties, did you look at that testimony?

23 A. No, sir. I did not.

24 Q. So you're not aware of the fact that  
25 Agent Pavlich testified under oath that

1 Dr. Franklin, who was ultimately -- well, he  
2 ultimately was killed by his wife, but before that  
3 happened, he got in trouble with the Ohio board for  
4 dispensing, writing bad scripts for opioids.

5 You didn't know that Mr. Pavlich  
6 testified that Dr. Franklin would write scripts for  
7 opioids and he would tell his customers, do not  
8 fill at the Giant Eagle and Rite Aids across the  
9 street, go to Overholts; you're not aware of that  
10 testimony, are you?

11 MS. KNIGHT: Objection to form.

12 A. As I stated, I had not read those  
13 depositions.

14 Q. (BY MR. LIVINGSTON:) And isn't that  
15 kind of information the sort of thing, the sort  
16 of -- it would be a factor to you that would  
17 suggest that those pharmacies were good pharmacies  
18 and were not bad pharmacies with respect to the  
19 diversion of opioids in these counties?

20 MS. KNIGHT: Objection to form.

21 A. I wouldn't draw that conclusion from  
22 that.

23 Q. (BY MR. LIVINGSTON:) Well, would you  
24 draw the conclusion that you should get on your  
25 phone and call up the local police and say, you

1 better scope out Giant Eagle and Rite Aid? It  
2 wouldn't cause you to do that, would it?

3 MS. KNIGHT: Objection to form.

4 A. That's totally outside of the  
5 previous question. I just wouldn't come to make  
6 that conclusion. It's such a limited amount of  
7 facts why a doctor would say, don't fill them  
8 across the street. Obviously maybe something  
9 occurred and he directed them somewhere else, or he  
10 already had a prearranged agreement with Overholts.

11 So just that broad statement, I can't  
12 draw any conclusions from that.

13 Q. (BY MR. LIVINGSTON:) Are you aware  
14 that the three agents all testified that all of the  
15 defendants, to their knowledge and information,  
16 were always in compliance with the Ohio Board of  
17 Pharmacy regulations, including their many SOM  
18 regulation and their corresponding duty  
19 obligations, are you aware of that? Did you factor  
20 that into your analysis?

21 A. I did not read their depositions and  
22 I am not aware of that testimony.

23 Q. So the plaintiffs' attorneys did not  
24 suggest to you that you should read those  
25 depositions?

1 MS. KNIGHT: Object to form.

2 A. They don't suggest what to read or  
3 what not to read. I -- I request documents to draw  
4 my opinion.

5 My experience in dealings with boards  
6 of pharmacies and the types of inspections they  
7 conduct are more at a pharmacy level and typically  
8 don't look at the same type of issues that I look  
9 at.

10 Q. (BY MR. LIVINGSTON:) So are you  
11 telling us that you didn't think it was important,  
12 before you issued your opinion that these  
13 pharmacies substantially contributed to the opioid  
14 crisis in these two counties, it wasn't important  
15 for you to look at what the Ohio Board of Pharmacy  
16 agents had to say about whether those pharmacies  
17 were acting lawfully or unlawfully?

18 MS. KNIGHT: Objection to form.

19 A. I don't qualify it as important or to  
20 be unimportant. It is just something I didn't look  
21 at in formulating my opinion.

22 Q. (BY MR. LIVINGSTON:) Well, we know  
23 it wasn't important enough to be included on your  
24 Schedule I, correct, as something that you  
25 reviewed?

1           A.       I did not review those documents,  
2       sir.

3                   MR. LIVINGSTON: I think we can take  
4       a break.

5                   MS. KNIGHT: Thank you.

6                   THE VIDEOGRAPHER: The time is now  
7       11:05 a.m. We're off the record.

8                   MR. LIVINGSTON: Ten minutes.

9                   (Whereupon, a break was had from  
10       10:05 a.m. until 11:18 a.m. EDT)

11                  THE VIDEOGRAPHER: The time is now  
12       approximately 11:18 a.m. We're on the record.

13                  MR. LIVINGSTON: I have still a  
14       number of questions that I would like to ask this  
15       witness. But as a matter of courtesy, I'm going to  
16       now turn it over to my colleagues so that they can  
17       get their questions in before the end of the day,  
18       and then I will reserve my rights when they're  
19       done, if there's time left, which I believe there  
20       will be, to finish my questioning.

21

22       EXAMINATION BY MS. SWIFT:

23                  Q.       Mr. Rafalski, this is Kate Swift.  
24       Can you hear me okay?

25                  A.       I can hear you, ma'am.

1 Q. Good morning. We met once before.

2 It's good to see you again, sir.

3 A. You too.

4 MS. KNIGHT: Ms. Swift, exactly which  
5 box should we pull?

6 MS. SWIFT: Can you tell which one is  
7 the Walgreens's box?

8 MS. KNIGHT: I'm so sorry. Which  
9 firm are you with?

10 MS. SWIFT: No problem. It's Bartlit  
11 Beck.

12 MS. KNIGHT: Okay. Got it.

13 Q. (BY MS. SWIFT:) I've got some  
14 questions before we even get to any documents.

15 A. Okay.

16 Q. Mr. Rafalski, you testified earlier  
17 today that the suspicious order monitoring  
18 regulation does not require pharmacies to have  
19 suspicious order monitoring systems when they're  
20 acting as customers purchasing medications from  
21 other distributors, do you remember that testimony?

22 A. Yes, I do.

23 Q. Distributors have their own separate  
24 obligations under the Controlled Substances Act  
25 that are different from pharmacy obligations; is

1       that a true statement?

2               A.       Yeah, more specifically under the  
3       regulations but promulgated by the CSA, yes.

4               Q.       So, for example, if a Walgreens  
5       pharmacy orders medication from ABC Distributor,  
6       ABC Distributor has an obligation to monitor and  
7       report for suspicious orders, correct?

8               A.       That's a correct statement.

9               Q.       But in your report, you also included  
10      an analysis identifying flagged orders that you  
11      attribute to the pharmacies but that were shipped  
12      by other distributors, do I have that right?

13              A.       Are you speaking of Dr. McCann's  
14      flagging the charts?

15              Q.       Yes, sir, I am.

16              A.       That's a correct statement. Yes, I  
17      did.

18              Q.       Doing that, including shipments from  
19      other distributors in the flagging analysis, makes  
20      a really big difference to the results of the  
21      flagging analysis, correct, sir?

22              A.       It does do a change of the results,  
23      it does.

24              Q.       I would like to just show you one  
25      example to make sure we're on the same page. Do

1     you have your report handy, I believe it was marked  
2     as Exhibit 2?

3                     MS. KNIGHT: I just took it away from  
4     him, Ms. Swift. Hang on one second.

5             Q.       (BY MS. SWIFT:) You might as well  
6     keep that out all day, sir.

7                     MS. KNIGHT: I don't have a box from  
8     you, Ms. Swift.

9                     MS. SWIFT: You don't have a box from  
10    Bartlit Beck.

11                    MS. KNIGHT: None.

12             Q.       (BY MS. SWIFT:) Mr. Rafalski, do you  
13    have a Bartlit Beck box?

14                    MS. KNIGHT: He only has what I have.

15             A.       They came to me. We have an  
16    envelope, two boxes and --

17                    MS. KNIGHT: But nothing from her  
18    firm.

19             A.       Nothing from your firm.

20                    MS. SWIFT: Can we get off the record  
21    for one second and talk about that just to make  
22    sure we can get on the same page about how we're  
23    going to deal with it.

24                    MS. KNIGHT: Sure.

25                    THE VIDEOGRAPHER: The time now is

1 approximately 11:21 a.m. We're off the record.

2 (Whereupon, a break was had from  
3 11:21 a.m. until 11:23 a.m.)

4 THE VIDEOGRAPHER: The time is now  
5 approximately 11:23 a.m. We're on the record.

6 Q. (BY MS. SWIFT:) Mr. Rafalski, do you  
7 have your report in the Lake and Trumbull case in  
8 front of you, Exhibit 2?

9 A. I do, Ms. Swift.

10 Q. I would like to ask you to turn to  
11 Page 46, please.

12 A. Okay.

13 Q. And do you see there in the first  
14 chart for method A, which I believe you like to  
15 refer to as the masters method, for CVS, for  
16 example, there are no flagged orders for oxycodone.  
17 Do you see that?

18 A. I do.

19 Q. But then if you turn to Page 51,  
20 there's an analysis for the same method A, but this  
21 time including shipments from other distributors as  
22 well. Correct?

23 A. That's correct.

24 Q. And in that version of method A,  
25 you've got ninety-six percent of CVS's orders of

1       oxycodone flagged. Is that correct?

2               A.       That's a correct statement.

3               Q.       Which of those numbers is the right  
4 one, in your view?

5               A.       I think they're both correct.

6               Q.       How can they both be correct? How  
7 can you have zero flagged orders and ninety-six  
8 percent of the orders flagged?

9               A.       Well, the first application is just  
10 distributions from CVS to CVS Pharmacy. The second  
11 application we talked about, Chart H, is  
12 distribution from all distributors to the CVS  
13 Pharmacy. So I think they accurately reflect the  
14 data that they analyze.

15              Q.       And my question was a little bit  
16 different. I understand that that's what the data  
17 shows when you run the analysis two completely  
18 different ways.

19                      But in your opinion, as a consultant  
20 on DEA rules and regulations relating to suspicious  
21 order monitoring, if you're trying to determine  
22 what the right number of flagged orders is for CVS  
23 under method A, which is the right number?

24                      MS. KNIGHT: Objection to form.

25               A.       I still believe they both are. The

1 one stands on its own in regards to CVS, and then  
2 the second one in all distributions including  
3 oxycodone, I still say both.

4 Q. (BY MS. SWIFT:) But you're  
5 attributing both of those numbers, the zero percent  
6 flagged orders on the one hand and the ninety-six  
7 percent flagged orders on the other, you're  
8 attributing both of those to CVS, correct, sir?

9 A. That's correct.

10 Q. All right. And we know that the  
11 distributors who shipped those other orders to CVS,  
12 that ninety-six percent, those distributors also  
13 had an obligation to monitor and report for  
14 suspicious orders, correct, sir?

15 A. They also had the same obligation as  
16 a distributor, that's correct, Ms. Swift.

17 Q. But you put all of those flagged  
18 orders on CVS, correct?

19 A. In this methodology H on 51, that's  
20 correct.

21 Q. You did the same thing for all five  
22 pharmacy defendants in this case, correct?

23 A. That's correct.

24 Q. Was it your idea to add this chart  
25 that starts on Page 51 of your report that includes

1 shipments from other distributors in the flagged  
2 order analysis, was that your idea?

3 A. Yes.

4 Q. You didn't get that idea from the  
5 plaintiffs' lawyers?

6 A. No. This would be consistent with my  
7 position in, for example, the Mallinckrodt case.  
8 My belief is that the registrants being CVS,  
9 Walgreens, Rite Aid, Walmart and HBC, while they're  
10 distributing to their own pharmacies, they would  
11 also be responsible for products that their  
12 pharmacies are purchasing from other distributors  
13 for the maintenance of effective controls.

14 Q. Well, it's not an analysis that you  
15 conducted in the Summit and Cuyahoga case, correct,  
16 sir?

17 A. That's correct.

18 Q. And it's also not an analysis you  
19 conducted in New York, correct, sir?

20 A. That's correct.

21 Q. And, in fact, we asked you about that  
22 in New York and you said it wouldn't be an  
23 appropriate way to do it. Do you remember that?

24 A. I do not.

25 Q. Okay. I show you my first exhibit.

1 MS. SWIFT: It's been a minute since  
2 I have done this. Can somebody remember, what do I  
3 do, right click on it -- introduce exhibit. I  
4 figured it out.

5 I'm going to introduce WAG Exhibit 1.  
6 It should be popping up in the exhibit share. I'll  
7 share my screen so you can see it, Mr. Rafalski.  
8 Just one second, please.

9 (WAG Exhibit 1 was marked for  
10 identification.)

11 Q. (BY MS. SWIFT:) Tell me if you can  
12 see this on your screen, sir.

13 A. I can.

14 Q. Have you seen the document that I've  
15 put on the screen before which has an SLCG in the  
16 top left corner and it says "Opioid Shipments to  
17 Pharmacies in Trumbull County, Ohio" across the  
18 top?

19 A. I don't specifically recall this,  
20 only because of the SLCG logo.

21 Q. And you --

22 A. It --

23 Q. Sorry. Go ahead.

24 A. It may be contained in one of the  
25 indexes that I have, but I don't recall

1 specifically seeing this before.

2 Q. Do you understand that SLCG is  
3 Dr. McCann's firm?

4 A. I do.

5 Q. Do you understand that he created --  
6 Dr. McCann created charts like this for really  
7 pharmacies all over the country, you can download  
8 it and print it from his website?

9 A. I've heard some conversation about  
10 his website, but I have never went there. So  
11 that's maybe why the SLCG shows up on the form.

12 Because it doesn't show up on any of  
13 the documents I have reviewed as part of the  
14 litigation.

15 Q. Got it. I'll represent to you that I  
16 got this Trumbull County pharmacy report from his  
17 website.

18 Have you seen charts like this in  
19 Dr. McCann's reports in these cases over the years?

20 A. Yes. Similar reports to this.

21 Q. The chart that I've got in front of  
22 you right now lists on the first two pages of this  
23 document all of the pharmacies in Trumbull County.  
24 And you can see the first series of them on the  
25 first page, correct, sir?

1           A.       Yes.

2           Q.       And you can see at the top of the  
3 page that it shows shipments -- opioid shipments to  
4 pharmacies in Trumbull County, Ohio from 2006 to  
5 2014, correct?

6           A.       Yes. I think this is the same chart  
7 that appears in, I think it's 9-H of my -- of the  
8 McCann report or of the McCann analysis. I believe  
9 I've reviewed the very -- if not this exact chart,  
10 a very similar chart to this.

11          Q.       Right. And you can see over on the  
12 right-hand side, the pharmacies are ordered by  
13 greatest amount of MME to smallest, can you see  
14 that in that far right column?

15          A.       I do.

16          Q.       What is MME, if you know?

17          A.       Morphine metric equivalency, I think.

18          Q.       Does morphine milligram equivalent  
19 sound right to you?

20          A.       Yes, I'm sorry.

21          Q.       That's a measure of how strong the  
22 opioid is as compared to morphine, correct, sir?

23          A.       Yeah. There's a factor that you  
24 utilize to -- a formula to come up with specific  
25 drugs. So it kind of takes the dosage unit out and

1 just broadly gives I guess one way to look at the  
2 volume or harm.

3 Q. And the reason for doing that, as I  
4 understand it, is to allow you to compare different  
5 opioids in different dosages by potency; is that  
6 your understanding as well?

7 A. Yes, that's a general understanding.  
8 It's kind of similar to looking weight and  
9 milligram, but it's just a different calculation.

10 Q. I'll scroll through so you can see  
11 that the list of pharmacies in Trumbull County,  
12 it's just two pages, and then it gets into more  
13 detail about the individual pharmacies.

14 And then my first question for you on  
15 the first two pages is going to be, would you agree  
16 with me that the largest Walgreens on this chart is  
17 this one right here, 804 West Market Street in  
18 Warren, Ohio?

19 A. I would agree.

20 Q. That Walgreens at 804 West Market  
21 received about, I'm going to round up, about  
22 forty-eight million MME of opioids between 2006 and  
23 2014, correct?

24 A. Yes.

25 Q. Would you agree with me that that's

1 well below the top three pharmacies on this list of  
2 pharmacies in Trumbull County?

3 A. In regards to the MME comparison, I  
4 do agree.

5 Q. There are only three pharmacies in  
6 the entire county that received more than a hundred  
7 million MME of opioids between 2006 and 2014,  
8 correct, sir?

9 A. According to this analysis, yes.

10 Q. And the number one on the list is  
11 Franklin Pharmacy and Health Care, and we've got  
12 Overholts Pharmacy, which we talked about a little  
13 bit before today, and the third one is Bellevue  
14 Medicine Shoppe. Do you see that, sir?

15 A. I see that, yes.

16 Q. The Franklin Pharmacy received two  
17 hundred and forty-one million MME of opioids  
18 between 2006 and 2014, correct?

19 A. That's correct.

20 Q. Overholts received one hundred and  
21 seventy-six million MME of opioids?

22 A. That's what the chart reflects, yes.

23 Q. And then the next pharmacy on the  
24 list after that top three, Franklin, Overholts and  
25 Bellevue, drops down to eighty-eight million,

1 right, sir?

2 A. That's correct.

3 Q. You didn't do any analysis in your  
4 report of the market share for any of the  
5 pharmacies in either Trumbull or Lake County,  
6 correct, sir?

7 A. I did not.

8 Q. So you're not going to come to trial  
9 and say Walgreens has X market share and so  
10 Walgreens is X percent responsible for the opioid  
11 crisis or anything like that, right?

12 A. That's not an opinion that I was  
13 requested to provide or that I did any analysis to  
14 be able to provide. That's a correct statement.

15 Q. And it is not an opinion that you are  
16 going to provide, correct, sir?

17 A. As I sit here today, I would not  
18 because I haven't formed an opinion on it.

19 Q. All right. If you change your mind,  
20 will you let us know?

21 A. Well, I would probably file something  
22 and we would visit again, so, yes, I will let you  
23 know.

24 Q. Well, sitting here today, based on  
25 the report that you have submitted and that we've

1 had an opportunity to look at, you can't say  
2 whether Walgreens is one percent responsible for  
3 the opioids crisis, ninety-nine percent responsible  
4 or anything in between, correct?

5 A. I did not do an analysis that would  
6 have quantified or given an amount of each  
7 particular defendant in regards to their dispensing  
8 or their activity. I didn't look at it that way.  
9 It was just the two opinions that are in my report  
10 are the only things that I focused on.

11 Q. You can't offer any assessment of the  
12 level of responsibility that any of the five  
13 pharmacies in the case have for any opioids crisis  
14 in Lake or Trumbull County, correct?

15 MS. KNIGHT: Objection to form.

16 A. Well, what do you mean by level of  
17 responsibility?

18 Q. (BY MS. SWIFT:) I mean what I was  
19 asking you before, are you going to come in and say  
20 Walgreens is one percent responsible for the  
21 opioids crisis in Lake and Trumbull Counties? You  
22 are not going to do that, right?

23 A. Well, I'm not going to put a percent  
24 on there. I mean, my opinions are pretty well  
25 stated in my report. It doesn't provide a percent

1 of conduct. It's just they failed it -- they  
2 failed in the suspicious order monitoring system  
3 and maintenance of effective controls.

4 So I have no intentions of coming in  
5 and saying they're hypothetically thirty-three  
6 percent responsible.

7 Q. Or any other level of responsibility?

8 A. Correct.

9 Q. Quantified?

10 A. Correct. It's just a failure as I  
11 pointed out in my report.

12 Q. You're not connecting any failure  
13 that you identify in your report to a level of  
14 contribution to an opioids crisis in Lake or  
15 Trumbull County, correct?

16 MS. KNIGHT: Object to form.

17 A. Well, I'm saying there's a  
18 contribution. I am just not putting a figure on  
19 it.

20 Q. (BY MS. SWIFT:) You can't quantify  
21 the contribution; is that fair?

22 A. I did not try to do that, that's  
23 correct.

24 Q. And you can't do it; is that fair?

25 MS. KNIGHT: Object to form.

1           A.       Yeah, I think that would be outside  
2 of my expertise other than just doing the raw  
3 numbers. That would be a correct statement.

4           Q.       (BY MS. SWIFT:) Right. We talked a  
5 little bit about the Overholts Pharmacy that  
6 received -- well, let's go back to the chart and  
7 look at it. You can see the Overholts Pharmacy  
8 received a hundred and seventy-six million MME,  
9 compared to that biggest Walgreens on the list, the  
10 one at 804 West Market which received about  
11 forty-eight million MME, right, sir?

12          A.       So now I'm seeing like a multitude of  
13 screens. Do you --

14               MS. KNIGHT: Yeah, I think we're  
15 seeing your background, Kate.

16               MS. SWIFT: Got it.

17               MR. FULLER: But thank you for the  
18 realtime, Kate.

19               MS. SWIFT: Mike, anytime.

20          A.       Appreciate that.

21          Q.       (BY MS. SWIFT:) I appreciate your  
22 letting me know.

23          A.       It's so small --

24               MS. KNIGHT: I thought it was my  
25 screen or I would have spoken up sooner. I was

1       trying to fix it on my computer.

2               Q.           (BY MS. SWIFT:)   What can you see  
3       now?

4               A.           That's better.   Thank you.

5                       MS. KNIGHT:   That's better.

6               Q.           (BY MS. SWIFT:)   Would you agree with  
7       me -- this is a little unfair, I'm going to ask you  
8       to do a little bit of math.   Would you agree with  
9       me that the Overholts Pharmacy received roughly a  
10      hundred and twenty-eight million more MME of  
11      opioids than the biggest Walgreens on the list?

12                      MS. KNIGHT:   Object to form.

13              A.           You said a hundred and --

14              Q.           (BY MS. SWIFT:)   I took a hundred and  
15      seventy-six minus forty-eight is what I'm doing.  
16      It's more than a hundred million --

17              A.           Overholts, I'm sorry.   I was looking  
18      at Franklin.   Yes, generally I would agree with  
19      that.

20              Q.           When you were at the DEA,  
21      Mr. Rafalski, was it important to you to prevent  
22      diversion of controlled substances?

23              A.           Yes.   That was the essential  
24      responsibility of my job.

25              Q.           Was it important to you to address

1 the opioids crisis?

2 A. Yes.

3 Q. Was it important to you, while you  
4 were at the DEA, to look at all possible factors  
5 contributing to the diversion of opioids?

6 MS. KNIGHT: Object to form,  
7 objection to form.

8 A. That's a pretty broad statement, but  
9 I wouldn't disagree with it.

10 Q. (BY MS. SWIFT:) But as a paid expert  
11 for the plaintiffs' lawyers in this case, you  
12 ignored Overholts Pharmacy all together; is that  
13 correct?

14 A. Well, I don't know that I would have  
15 ignored it. Just like if I was at the DEA and I  
16 was conducting an investigation or -- for example,  
17 one of the cases I worked, Masters Pharmaceutical,  
18 I evaluated some of the customers. And it's not  
19 that I overlooked other customers, it's just that  
20 that wasn't -- it wouldn't have been a pharmacy  
21 that I would have looked at.

22 So in regards to this, as an expert,  
23 I'm given defendants to review, and I'm given a  
24 specific area to do a review in, and that's  
25 suspicious order monitoring system and maintenance

1 of effective controls.

2 So I wouldn't -- you know, to go out  
3 and start reviewing other pharmacies outside of the  
4 five defendants, I just wouldn't do that.

5 Q. So it wasn't your assignment in this  
6 case to figure out what the most important  
7 contributors to the opioids crisis in Lake and  
8 Trumbull County was; is that a fair statement?

9 A. I don't know if that was the  
10 reasoning. I just was given five defendants to  
11 review.

12 Q. So is it fair to say that the reason  
13 that you ignored Overholts Pharmacy in your  
14 analysis in this case is because the plaintiffs'  
15 lawyers told you only to focus on the five  
16 pharmacies that are in the case?

17 MS. KNIGHT: Objection to form.

18 A. Yes, when I -- when I agree to give  
19 an opinion, it's specific to certain defendants.  
20 And I don't stray outside of that.

21 Q. (BY MS. SWIFT:) You don't stray  
22 outside of that, and, therefore, to the extent that  
23 the Overholts Pharmacy was the principal  
24 contributor to an opioids crisis in Lake and  
25 Trumbull County, you just don't have anything to

1 say about it because it wasn't something the  
2 plaintiffs' lawyers asked you to do; is that fair,  
3 sir?

4 MS. KNIGHT: Objection to form.

5 A. Well, it's not something I reviewed  
6 or have any information to formulate an opinion on,  
7 so I guess it's a correct statement.

8 Q. (BY MS. SWIFT:) All right. The  
9 Franklin Pharmacy is actually the biggest one on  
10 this list, and that one has got two hundred and  
11 forty-one million MME over the time frame that  
12 we're talking about, right, sir?

13 A. That's correct.

14 Q. If you'll bear with me, I'd like to  
15 ask you to do -- this is the last math problem for  
16 the day, I think. I want to count up the Walgreens  
17 that are on the list in Trumbull County. I believe  
18 there are six of them. We've got this one here,  
19 804 West Market, right, you see that?

20 A. Yes.

21 Q. And we've already said that one has  
22 got about forty-eight million, MME, right?

23 A. Correct.

24 Q. And the next, the next Walgreens is  
25 5027 Youngstown, also in Warren, do you see that?

1 A. Yes.

2 Q. Also -- you're faster than I am.

3 A. Ninety-five million will be it.

4 Q. And then the next Walgreens is the  
5 one at 3390 Elm Road, right?

6 A. Correct.

7 Q. That one is about forty-six million?

8 A. One forty.

9 Q. And the next one is the one at 15  
10 South Main Street in Hubbard, do you see that?

11 A. I do, so it's one eighty now.

12 Q. Okay. The next one is this one at  
13 600 South Mecca, are you with me?

14 A. I see it. So that's thirty -- so  
15 we're at two ten.

16 Q. Then we've got this one at 2249  
17 Youngstown-Warren Road in Niles, about 28 million?

18 A. Yes. So we're at two thirty-eight.  
19 We'll probably round that up just to be two  
20 thirty-nine.

21 Q. And we'll just scroll through to make  
22 sure we didn't miss any others at the bottom of the  
23 list.

24 A. I think you only have six in  
25 Trumbull.

1 Q. Yep. And that's six, right?

2 A. Yes.

3 Q. Would you agree with me that all six  
4 Walgreens added up together for this time frame  
5 received less MME of opioids than the number one  
6 pharmacy on the list?

7 A. Yes. We kind of rounded down going  
8 through, but we're at two thirty-eight and there's  
9 two forty-one. So the math that we did here, I  
10 would agree that it's below two forty-one.

11 Q. Right. You worked on the Masters  
12 Pharmaceutical case when you were at DEA, correct?  
13 (Reporter clarification.)

14 Q. You worked on the Masters  
15 Pharmaceutical case while you were at DEA, correct,  
16 sir?

17 A. I did.

18 Q. You were the lead investigator in  
19 that case?

20 A. I was.

21 Q. Three of the flagging methods that  
22 you used in this case, you purport to be based, at  
23 least in part, on the method that Masters used; is  
24 that fair?

25 A. That would be a fair statement,

1 Ms. Swift.

2 Q. It's methods A, B and G, as in good?

3 A. Yes.

4 Q. Masters was a distributor of opioids  
5 to pharmacies around the country, correct?

6 A. Yes, that's an accurate statement.

7 Q. Did Masters lose its license to  
8 distribute opioids as a result of your case?

9 A. Yes.

10 Q. Do you know how many oxycodone pills,  
11 how many dosage units Masters shipped to its  
12 largest pharmacy customer in 2009, just off the top  
13 of your head?

14 A. I do not.

15 Q. That's not something that you looked  
16 at for purposes of your report in Lake and Trumbull  
17 County, correct, Masters' shipments to pharmacies?

18 A. No, it was not.

19 Q. Are you aware that Masters did ship  
20 opioids to pharmacies in Lake and Trumbull  
21 Counties?

22 A. I think I recall seeing and reviewing  
23 some charts of Mr. McCann or some of the data. I  
24 believe so. I don't recall which specific one.

25 Q. You didn't look at any of Masters'

1 shipments to pharmacies in Lake and Trumbull County  
2 for purposes of this case, correct?

3 MS. KNIGHT: You keep sort of dying  
4 off in the middle of the sentence. I didn't get  
5 that whole sentence. Sorry.

6 Q. (BY MS. SWIFT:) Mr. Rafalski, you  
7 did not look at any of Masters' shipments to  
8 pharmacies in Lake and Trumbull County for purposes  
9 of this case, correct?

10 A. That's a correct statement. I did  
11 not.

12 Q. You have no opinion on whether  
13 Masters is more or less responsible for the opioids  
14 crisis in Lake and Trumbull County than any other  
15 distributor, correct?

16 A. I don't have an opinion on Masters  
17 because I did not review their activity in Trumbull  
18 and Lake County.

19 Q. All right. Now I'm going to show you  
20 another one of Dr. McCann's charts. Bear with me  
21 for a second. I'm going to mark another exhibit.  
22 This will be WAG 2.

23 (WAG Exhibit 2 was marked for  
24 identification.)

25 Q. (BY MS. SWIFT:) Can you see that on

1 the screen, Mr. Rafalski?

2 A. Yeah, but you have to minimize all  
3 your other screens.

4 MS. SWIFT: I did it again. Hold on.

5 Q. (BY MS. SWIFT:) How's that?

6 A. That's good, Ms. Swift. Thank you.

7 Q. I'll represent to you, but tell me if  
8 you disagree that this is what you see on the  
9 screen. This is the same kind of chart we were  
10 just looking at from Dr. McCann's website. This is  
11 for Lake County, Ohio, not Trumbull. Do you see  
12 that at the top of the page?

13 A. I do.

14 Q. All right. And you'll recall that  
15 the biggest Walgreens in Trumbull County that we  
16 looked at was the one at 804 West Market and had  
17 about forty-eight million MME for the time period  
18 2006 to 2014. Do you remember that?

19 A. Yes.

20 Q. Do you see here, sir, that the  
21 biggest Walgreens in Lake County is this one at  
22 5881 Som Center Road in Willoughby and it's bigger?  
23 It received about fifty-seven million MME over the  
24 time period, do you see that?

25 A. I see it.

1           Q.       Would you agree with me based on  
2       these two charts from Dr. McCann that Walgreens at  
3       5881 Som Center Road is the biggest Walgreens in  
4       the two counties?

5                   MS. KNIGHT:   Objection to form.

6           A.       By MME, yes.

7           Q.       (BY MS. SWIFT:)   Now, I'm going to  
8       turn to Page 16 of WAG Exhibit 2, which you can see  
9       right here is the page number where the details  
10      about that Walgreens at 5881 Som Center Road --

11          A.       Yes, I'm familiar with that.

12          Q.       I'm sorry?

13          A.       Yes, I'm familiar with that.

14      That's --

15          Q.       I get it.

16          A.       This is similar to the production  
17      that I talked about.

18          Q.       You're familiar with the way  
19      Mr. McCann puts together these charts, is that what  
20      you're saying?

21          A.       Yes.

22          Q.       On Page 16, you can see -- let me see  
23      if I can show the whole thing.   Can you see the  
24      whole screen, Mr. Rafalski?

25          A.       I can see through year 2009 full.

1 Q. Perfect.

2 A. Okay.

3 Q. And what we see on this screen is  
4 more detail about the shipments received at the  
5 Walgreens on Som Center Road between 2006 and 2014,  
6 correct?

7 A. Yes.

8 Q. And in 2009, I believe you said you  
9 could see 2009, Walgreens -- this Walgreens on Som  
10 Center Road received three hundred and twenty-five  
11 thousand doses of oxycodone. Do you see that?

12 A. Yes.

13 Q. Here?

14 A. I see it.

15 Q. In 2010, the Walgreens on Som Center  
16 Road received three hundred and sixty-four thousand  
17 eight hundred dosage units of oxycodone. Do you  
18 see that?

19 A. I do.

20 Q. Then if we flip over to the next page  
21 for 2011, you can see it went down just a tiny bit,  
22 this Walgreens received three hundred and  
23 sixty-four thousand six hundred doses of oxycodone  
24 for this entire time period of 2006 to 2014,  
25 correct?

1           A.       Two hundred --

2           Q.       Sorry. I'm sorry. Strike the  
3 question.

4                   In 2011, the Walgreens on Som Center  
5 Road received three hundred and sixty-four thousand  
6 six hundred dosage units of oxycodone, correct?

7           A.       That's correct.

8           Q.       And then just quickly, you can see  
9 from the subsequent years, that it goes down after  
10 that?

11          A.       Correct.

12          Q.       I want you to keep that handy. This  
13 is going to be tricky, given that you don't have a  
14 hard copy. Well --

15                   MS. KNIGHT: I was just going to say,  
16 we can't keep anything handy.

17                   MS. SWIFT: Right.

18          Q.       (BY MS. SWIFT:) Will you agree with  
19 me that the largest year in terms of receipt of  
20 oxycodone for this Walgreens on Som Center Road,  
21 the biggest year was 2010 with three hundred and  
22 sixty-four thousand eight hundred?

23          A.       No, wouldn't it be '11, three  
24 sixty-four six hundred? Yes, you're correct.

25          Q.       It was lightly bigger in 2010. The

1       only point is it never goes above three sixty-five?

2               A.       I agree you moved it up. It's three  
3       sixty-four eight hundred.

4               Q.       Okay.

5               A.       Just for clarification, it's not  
6       specific to any particular milligram or pill size.  
7       It's just a dosage by family.

8               THE REPORTER: Y'all are overlapping  
9       a little bit when you're saying the numbers. You  
10      need to wait till each of you finish. I couldn't  
11      hear the end of the numbers.

12              MS. SWIFT: Do you want us to do them  
13      again, Laura?

14              THE REPORTER: I can figure it out  
15      from the chart.

16              MS. SWIFT: Okay. I appreciate it.  
17      We're not supposed to speak over each other, which  
18      both of us know very well and we still do it. I  
19      apologize.

20              Q.       (BY MS. SWIFT:) All right. Keeping  
21      that roughly three hundred and sixty-five thousand  
22      number in your mind, Mr. Rafalski, as the largest  
23      number of oxycodone dosage units that this  
24      Walgreens ever received in -- you know, on an  
25      annual basis in this time frame, I want to move to

1 another document. Are you with me?

2 A. I'm with you.

3 MS. SWIFT: This will be WAG 3.

4 (WAG Exhibit 3 was marked for  
5 identification.)

6 Q. (BY MS. SWIFT:) And just to make  
7 sure I'm tracking what I'm showing you, can you see  
8 me introducing the exhibit?

9 A. I can.

10 Q. Great. Is that all that you can see?

11 A. Yes. So far.

12 Q. Great. I've put this exhibit on the  
13 screen. You can see it says "Ohio Prescription  
14 Drug Abuse Task Force" on the first page and it  
15 says it's a task force report from October 1st of  
16 2010, do you see that?

17 A. I do. "Task Force Recommendations."

18 Q. And at the bottom it says "Presented  
19 to Governor Ted Strickland and the Ohio General  
20 Assembly," correct?

21 A. I see that, Ms. Strickland --  
22 Ms. Swift.

23 Q. Have you ever seen this document  
24 before, Mr. Rafalski?

25 A. I'm not sure. Right now I don't

1 recall it.

2 Q. It's not cited in your report. Is it  
3 fair to say you did not rely on this document in  
4 forming your opinions in this case?

5 A. Yes, I do not recall seeing it.

6 Q. On Page 2, just to give you a sense  
7 of what we are looking at here with this Ohio task  
8 force report, you can see in the first paragraph of  
9 this letter to Governor Strickland that, "The Ohio  
10 Prescription Drug Abuse Task Force has completed  
11 its work and has developed twenty policy  
12 recommendations that we" will -- "we believe will  
13 curb Ohio's prescription drug abuse epidemic." Do  
14 you see that?

15 A. I see that it says that.

16 Q. All right. So I am just going to  
17 skip to the part that I want to ask you questions  
18 about. And I am happy to show you any part of it  
19 that you want. But I -- in the interest of time, I  
20 really just have questions about like a page of it.

21 And where I am going now, for folks  
22 following along, is to Page 49, which is Page 39 of  
23 the PDF. And do you see, Mr. Rafalski, at the top  
24 of this page, there's the heading, "Regulatory  
25 Recommendations"?

1           A.       I see this.

2           Q.       And then at the bottom, there's a  
3       subheading that says, "Examine the" -- "the  
4       Regulation of Prescriber Dispensing of Controlled  
5       Substances"; do you see that?

6           A.       I see that.

7           Q.       The -- that first paragraph under  
8       that heading says, "Reports have shown some pain  
9       clinics essentially operate as 'pill mills' or  
10      quasi-pharmacies by dispensing drugs that have the  
11      highest potential for abuse and diversion for  
12      street use with only cursory or limited medical  
13      evaluations." Did I read all that correctly?

14          A.       You did.

15          Q.       Do you understand from the heading in  
16      that first sentence that I have read to you that  
17      this section is talking about clinics where doctors  
18      dispense drugs directly to patients without having  
19      to go to a Walgreens and fill a prescription?

20          A.       Well, I think you can draw the  
21      inference that it says that, but my experience with  
22      DEA and then as an -- as a expert is the "pill  
23      mill" term seem to be pretty -- used pretty broadly  
24      now. And that in -- sometimes even they consider  
25      doctors pill -- prescribing doctors pill mills. So

1 I am always cautious when I see the term "pill  
2 mills." What --

3 Q. It can have multiple meanings, is  
4 that what you are saying?

5 A. Yes. Now, pain clinics, for pain  
6 clinics, it doesn't -- it -- pain clinics and  
7 dispensing would be pursuant to a doctor's  
8 registration, if that is what they are speaking  
9 about here. But we may get more direction later in  
10 this article.

11 Q. Okay. You understand that whether it  
12 is referred to as a pill mill or a pain clinic,  
13 those are often terms that are used to describe  
14 businesses where doctors dispense medications  
15 directly to patients?

16 A. It could, but -- also a pain clinic  
17 is sometimes just referred to as a doctor that is  
18 writing pain pills. And then pill mills sometimes  
19 are -- doctors are referred to pill mills. So just  
20 so, you know, my -- I don't give an exclusive use  
21 to that -- those words.

22 Q. And I am not asking you to.

23 A. Okay.

24 Q. The next sentence in this paragraph  
25 says, "This is often done as a direct result of

1 pharmacists refusing to fill prescriptions from  
2 suspicious and known intentional overprescribers."

3 Did I read that part correctly?

4 A. You did.

5 Q. It goes on to say, "It is also  
6 recognized that direct dispensing by prescribers of  
7 controlled substances is not submitted to the of  
8 Ohio's prescription monitoring system, OARRS." Did  
9 you know that there was ever a period of time where  
10 dispensing of controlled substances directly by  
11 doctors was not reported in the OARRS system? Was  
12 that something you were aware of?

13 A. I was not.

14 Q. But you do know that sometimes  
15 doctors dispense directly to patients, right, sir?

16 A. Practitioners have the ability to  
17 dispense as long as they comply with some of the  
18 regulations required. I know that in Michigan they  
19 report, just I did not know at least in 2009 that  
20 they did not report in Ohio.

21 Q. The next sentence reads, "In 2009,  
22 Ohio prescribers dispensed prescription opioids at  
23 a much higher rate than neighboring states." Did  
24 you know that?

25 A. I did not.

1           Q.       And then it refers to Figures 12 and  
2       13, and you can see the figures there on the page,  
3       right?

4           A.       I can.

5           Q.       Figure 12 shows that in 2009, Ohio  
6       prescribers dispensed nine hundred and sixty-nine  
7       thousand, three hundred and two dosage units of  
8       oxycodone. Do you see that?

9           A.       I do.

10          Q.       And I am not going to take the time  
11       to look at it, but if you look at this -- the  
12       footnotes in this report on Page 75 of the PDF, you  
13       can see that Footnotes 95 and '6 show that this  
14       information comes from ARCOS data, and that is data  
15       from the DEA, right, sir?

16          A.       If it says it comes from ARCOS, that  
17       would come from the DEA, that's correct.

18          Q.       You recall that the document we were  
19       looking at a moment ago, Dr. McCann's chart,  
20       regarding the largest Walgreens in both Lake and  
21       Trumbull County, the one on SOM Center Road, in  
22       2009, that Walgreens received just three hundred  
23       and twenty-five thousand doses of oxycodone. Do  
24       you remember that?

25          A.       I do.

1           Q.       Doctors in Ohio dispensed almost  
2       three times as much oxycodone as the biggest  
3       Walgreens in Lake and Trumbull County, would you  
4       agree with that based on what we have seen today?

5                       (Reporter clarification.)

6           Q.       (BY MS. SWIFT:) Based on the  
7       documents we have looked at today.

8                       MS. KNIGHT: Objection to form.

9           A.       In -- I -- just that this reflects  
10      the entire state of Ohio, that -- this number that  
11      is in this report, and you are referring back to  
12      the pharmacy that is just located in one county of  
13      Ohio. So just with that caveat, other than that, I  
14      would agree.

15          Q.       (BY MS. SWIFT:) All right. I am  
16      going to make one additional comparison to the --  
17      to the -- that Walgreens store on SOM Center Road,  
18      and to do that, I got to show you one more  
19      document.

20                      (WAG Exhibit 4 was marked for  
21                      identification.)

22                      MS. SWIFT: This will be WAG 4.

23          Q.       (BY MS. SWIFT:) Can you see that on  
24      the screen, sir?

25          A.       I can.

1           Q.       And you can see from the first page,  
2       this is a document, it is a -- it is a court  
3       document from the Southern District of Florida. Do  
4       you see that at the top?

5           A.       I do.

6           Q.       And I will scroll down to the second  
7       page, where you can see it is a superseding  
8       indictment. Do you see that?

9           A.       I do.

10          Q.       And the date on it that is stamped on  
11       the right-hand side is August 11th, 2011. Do you  
12       see that?

13          A.       Yes. I am -- I am familiar with many  
14       of the names on this.

15          Q.       I was going to ask you, have you seen  
16       this -- this superseding indictment from 2011 of --  
17       there's a number of doctors listed and other folks.  
18       Have you seen this document before?

19          A.       I don't recall specifically the  
20       document, but I recall the George brothers, and  
21       then there's several doctors on this that I recall  
22       from working the Harvard case.

23          Q.       Got it. All right. I am just going  
24       to ask you a handful of questions about this one.  
25       I am going to go to Paragraph Number 1. Paragraph

1 Number 1 of the superseding indictment that I  
2 marked as Exhibit 4, WAG Exhibit 4, says that the  
3 defendants were members of "a criminal organization  
4 that operated principally in Broward and Palm Beach  
5 Counties, Florida."

6 Do you understand, Mr. Rafalski, that  
7 Florida was home to a large number of pain clinics  
8 or pain -- pill mills, whatever you want to call  
9 them, in this 2011 time frame?

10 A. So in Florida, the pain clinic was --  
11 would -- in the proper time frame would have  
12 been -- doctors would have been dispensing from the  
13 pain clinics pursuant to drugs that were purchased  
14 through the doctors' DEA registration. That  
15 would --

16 Q. And you are --

17 A. And that would be the accurate  
18 description at that time period of what a real pain  
19 clinic was, until it kind of broadened.

20 Q. You can see in Paragraph 2 that the  
21 Southern District of Florida's superseding  
22 indictment described those pain clinics as "a  
23 series of 'pill mills.'" Do you see that?

24 A. Yes.

25 Q. Paragraph 2 says that, "Members and

1 associates of the enterprise primarily operated as  
2 a series of 'pill mills' where patrons procured  
3 prescription narcotics and controlled substances  
4 under the guise of medical" -- that is a repeat  
5 page, I apologize -- "under the guise of medical  
6 necessity," correct?

7 A. I don't disagree with that statement.

8 Q. Then we will go to Page 3, which is  
9 Page 5 of the PDF, I believe. And do you see, it  
10 starts to list the entities that are involved in  
11 this criminal enterprise?

12 A. I do.

13 Q. And it includes pain clinics called  
14 Hallandale Pain; American Pain, LLC; Executive  
15 Pain; and East Coast Pain. Do you see all of  
16 those?

17 A. I see them.

18 Q. All right. Now I am going to go to  
19 Page 19. I want to ask you about some of the  
20 doctors in this indictment from Florida. Do you  
21 see the heading, "Defendant Physician Cynthia Cadet  
22 and Coconspirator Physicians"?

23 A. I do.

24 Q. Then Paragraph 59 is a general  
25 paragraph describing the ARCOS database; do you see

1       that?

2               A.       I do.

3               Q.       It says, "ARCOS is used to accumulate  
4       transactions of controlled substances which are  
5       then summarized in reports that federal and state  
6       investigators can use to identify diversion into  
7       illicit channels of distribution." Do you agree  
8       with all of that?

9               A.       I do.

10              Q.       Now, in the subsequent paragraphs  
11       that we will look at, I will scroll over to the  
12       next page, starting with Paragraph 60, these  
13       paragraphs list amounts of oxycodone that these  
14       indicted doctors purchased in this time frame. And  
15       you will see as we go through, it is not the same  
16       time frame for every paragraph, but it gives you a  
17       general sense, in the 2009 time frame, how much  
18       oxycodone these doctors were purchasing.

19                      Are you with me so far?

20              A.       I am.

21              Q.       All right. So in Paragraph 62, do  
22       you see that Dr. Cadet ordered eight hundred and  
23       eighty-six thousand doses of oxycodone in the  
24       course of about fourteen months in the 2009 time  
25       frame?

1 A. I do.

2 Q. And then in Paragraph 64, it says  
3 that Dr. Aruta ordered nine hundred and sixteen  
4 thousand, three hundred doses of oxycodone in  
5 approximately thirteen months in that time frame.

6 A. I see that also.

7 Q. Paragraph 66 shows that Dr. Boshers  
8 ordered more than a million doses of oxycodone in  
9 about eighteen months. Do you see that?

10 A. I do.

11 Q. Dr. Boshers -- maybe I am  
12 mispronouncing it.

13 A. No. I think that is correct.

14 Q. Dr. Boshers ordered more than one  
15 million doses of oxycodone in about eighteen  
16 months, correct?

17 A. Yeah, that would be a correct  
18 statement.

19 Q. So that one doctor, Dr. Boshers,  
20 ordered more oxycodone doses in eighteen months  
21 than all of the doctors in Ohio purchased in the  
22 year of 2009. Remember that number for Ohio was  
23 just under a million?

24 A. Yes. When we were looking at the  
25 Ohio report, it is interesting that they failed to

1 list the Florida doctors. I wondered if that was  
2 to maybe make Ohio look more significant.

3 Q. It was an Ohio report. It was an --  
4 a report to the Ohio governor, do you recall that?

5 A. Yes, but they cited some other states  
6 too, West Virginia, and my recollection is they  
7 listed some other states to do a comparison.

8 Q. In any event, you will agree with me  
9 that this one doctor in Florida purchased more  
10 oxycodone in the 2009 time frame than all of the  
11 doctors combined in the state of Ohio?

12 A. I would not disagree with that  
13 statement.

14 Q. If you look at Paragraph 68, the  
15 superseding indictment shows that a Dr. Dreszer  
16 ordered eight hundred and forty-nine thousand, six  
17 hundred doses of oxycodone in the -- in the 2009  
18 time frame, do you see that?

19 A. I do see that.

20 Q. And then I am not going to go through  
21 them all, but you can see as I scroll that the  
22 superseding indictment in the Southern District of  
23 Florida goes on from there reciting the amounts of  
24 oxycodone that were purchased by additional  
25 doctors; do you see that?

1 A. I do.

2 Q. Okay. Now, I will represent to you  
3 that we checked the ARCOS data for the doctors who  
4 worked at just one of these pain clinics, the  
5 American Pain Clinic. And first of all, have you  
6 heard of the American Pain Clinic before today?

7 A. I have.

8 Q. What do you know about it?

9 A. I believe that was owned by the  
10 George brothers. And I think it was maybe the  
11 second pain clinic they owned. I think they owned  
12 two. One closed, and they reopened a second one.

13 Q. How -- what is the basis of your  
14 knowledge about the George brothers and the  
15 American Pain Clinic that they ran?

16 A. It is just some recollection from  
17 when I was working at the DEA.

18 Q. Did you work on this case that we are  
19 talking about right now?

20 A. I worked on the Harvard case, which  
21 was distributing to many of the doctors on this  
22 list.

23 Q. Do you know that the George brothers  
24 were convicted for their crimes that are outlined  
25 in this indictment?

1           A.       I know they were convicted. I don't  
2 know if it was specific to this indictment. I know  
3 they were convicted, yes.

4           Q.       Uh-huh. Do you know that they are in  
5 jail to this day?

6           A.       I do not know this -- their status.

7           Q.       Is there anything else that you know  
8 about the American Pain Clinic, other than what you  
9 have told me already?

10          A.       Other than many of the doctors that I  
11 believe were indicted and incarcerated that were  
12 working there.

13          Q.       All right. As I said, we looked at  
14 the ARCOS data for these doctors that we just  
15 walked through, Dr. Cadet, Dr. Boshers,  
16 Dr. Dreszer, and a couple of the other ones. And I  
17 will represent to you -- you don't have to take my  
18 word for it, but I will ask you to assume that I am  
19 right when I tell you that the DEA's ARCOS data  
20 shows that with respect to five doctors who worked  
21 at the American Pain Clinic in Florida, those  
22 doctors purchased more than 7.6 million dosage  
23 units of oxycodone in 2000 -- 2009 alone. Does  
24 that number surprise you, based on what you know  
25 about this case?

1 MS. KNIGHT: Objection to form.

2 A. I never -- I never looked at that  
3 specific group and that specific number, but I am  
4 aware of the large distributions to doctors in  
5 South Florida during that time period.

6 Q. (BY MS. SWIFT:) You don't dispute  
7 that just five doctors at the American Pain Clinic  
8 in Florida purchased more than seven million dosage  
9 units of oxycodone in 2009?

10 MS. KNIGHT: Object to form.

11 A. No, I do not dispute that.

12 Q. (BY MS. SWIFT:) And again, you  
13 recall we looked at the numbers for 2009 for all of  
14 the doctors in Ohio, and it was under a million  
15 dosage units of oxycodone, right?

16 A. That's correct.

17 Q. Doctors at this one Florida pain  
18 clinic, American Pain, ordered more than seven  
19 times as much oxycodone as all Ohio doctors  
20 combined. Did you know that?

21 MS. KNIGHT: Objection to form.

22 A. I -- well, when you said that I know  
23 that, are you speaking to the comparison to Ohio I  
24 did?

25 Q. (BY MS. SWIFT:) Yes.

1           A.       No -- well, let me think about that.  
2       In my -- I think I did some analysis. I just don't  
3       recall what it was. But I looked at the  
4       distribution to doctors at all of the states during  
5       this time period, so I don't have a recollection  
6       exactly of the numbers for Florida, but I am sure  
7       that at one point I did know it, or at least I --  
8       it was part of a list that I looked at.

9           Q.       And again, we looked at the largest  
10      Walgreens in all of Lake and Trumbull County and  
11      saw that in 2009, that Walgreens received about  
12      three hundred and twenty-five thousand dosage units  
13      of oxycodone.

14                   Did you know that the five doctors at  
15      the American Pain Clinic in Florida ordered more  
16      than twenty times as much oxycodone as the biggest  
17      Walgreens in Lake and Trumbull Counties?

18                   MS. KNIGHT: Objection to form.

19           A.       I didn't have any direct knowledge of  
20      that figure.

21           Q.       (BY MS. SWIFT:) All right. Now I  
22      would like you to look at Paragraph 84 of the  
23      indictment relating to the American Pain Clinic in  
24      Florida. It says, "Of the prescriptions filled at  
25      American Pain, approximately ninety-six percent

1       were filled for either oxycodone or alprazolam."

2       Did you know that?

3               A.       No, I did not know that specific  
4       number.

5               Q.       You didn't do any analysis of what  
6       that number would be for any of the pharmacies,  
7       stores in Lake and Trumbull County, correct, sir?

8                       MS. KNIGHT:  Objection to form.  
9       Only -- Ms. Swift, I didn't hear your whole  
10      question.  I'm sorry.

11              Q.       (BY MS. SWIFT:)  You didn't conduct  
12      any analysis of what that number would be, what the  
13      percentage of prescriptions filled that were either  
14      oxycodone or alprazolam, you didn't do that  
15      analysis for any of the pharmacies in Lake and  
16      Trumbull County, right, sir?

17              A.       I did not.

18              Q.       Paragraph 85 of the superseding  
19      indictment says that, "The prescriptions filled at  
20      American Pain reflect that approximately eighty  
21      percent were for individuals who listed an address  
22      outside of Florida."  Were you aware of that?

23              A.       I was not.

24              Q.       All right.  Do you have any idea how  
25      many of those were for Ohio residents?

1           A.       I do not.

2           Q.       Paragraph 6 -- or, sorry, 86, tells  
3       us -- you can see the last sentence says, "Patients  
4       from Tennessee accounted for approximately 18.4  
5       percent." Do you see that?

6           A.       Do.

7           Q.       And then it says, "Patients from Ohio  
8       accounted for approximately 11.5 percent" of the  
9       prescriptions we are talking about. Do you see  
10      that?

11          A.       I do. Now, is that -- is that -- and  
12      this is specific for American Pain, correct?

13          Q.       This is specific for American Pain.

14          A.       Okay.

15          Q.       You didn't conduct any analysis of  
16      this pain clinic or any other in Florida for  
17      purposes of your Lake and Trumbull report, right,  
18      sir?

19          A.       I did not.

20          Q.       You haven't conducted any analysis of  
21      any Florida pain clinic for any of your reports  
22      that you have issued in the opioids litigation,  
23      right, sir?

24          A.       I have not provided an opinion or  
25      done any analysis in Florida.

1           Q.       You don't have any opinion about the  
2       extent to which the doctors and pain clinics  
3       described in this federal indictment contributed to  
4       the opioids epidemic anywhere in America, correct,  
5       sir?

6           A.       Well, I have an opinion that they  
7       contributed significantly, but I -- it would just  
8       be through my experience of working in the DEA and  
9       having knowledge of the migration of the pills.

10                  But I didn't -- I did not offer an  
11       opinion on that, yeah, an expert opinion on that,  
12       I'm sorry.

13           Q.       Do you know how many doctors wrote  
14       prescriptions for opioids in Lake and Trumbull  
15       County during the relevant time period, from 2006  
16       to the present?

17           A.       I do not.

18           Q.       Do you know how many of those  
19       prescriptions were illegitimate, meaning they  
20       weren't for a legitimate medical purpose?

21           A.       I do not.

22           Q.       You don't have any opinion on how  
23       many prescriptions filled by one of the pharmacies  
24       in this case were diverted?

25           A.       So a part of -- so in forming my

1 expert opinion, I wasn't asked to review any  
2 materials, documents or information related to  
3 that, so I don't offer an opinion on that.

4 Q. You have no idea if any prescriptions  
5 filled by a Walgreens pharmacy were diverted; is  
6 that fair, because you didn't look?

7 A. I did not review prescriptions for --  
8 specific prescriptions at any Walgreens, so I guess  
9 that would be generally a correct statement.

10 Q. Do you know how many prescriptions  
11 filled by any of the other pharmacies in Lake and  
12 Trumbull were diverted after they were filled?

13 A. I do not.

14 Q. That is true, whether we are talking  
15 about somebody taking a prescription bottle from a  
16 friend's medicine cabinet or any other form of  
17 diversion, you don't have any idea what those  
18 numbers are?

19 A. No. I wasn't asked to provide an  
20 opinion on that, so I don't have any information to  
21 form an opinion on that or to --

22 Q. And you are not --

23 A. -- or to provide you with any numbers  
24 or any direct knowledge of that.

25 Q. You are not aware of any pills that

1 Walgreens shipped to one of its pharmacies that  
2 went on to fill a prescription written by a doctor  
3 who had prescribed that drug improperly, you  
4 haven't done -- haven't done any analysis to match  
5 that up; is that fair?

6 A. That is a fair statement. I have not  
7 looked at the prescribing and matched it with some  
8 of the doctors that were engaged in illicit  
9 activity.

10 Q. Are you aware of any prescription  
11 dispensed by a Walgreens or any of the other  
12 pharmacies in this case where a licensed pharmacist  
13 wasn't involved in the dispensing?

14 A. I haven't done a review to provide an  
15 opinion on that, Ms. Swift.

16 Q. Are you aware, Mr. Rafalski, that the  
17 DEA conducts routine investigations of distributors  
18 every few years or so? I think actually you  
19 testified a little bit about that earlier today; is  
20 that right?

21 A. Cyclic or work-plan investigations  
22 you are speaking of, that would be correct.

23 Q. And those routine investigations are  
24 meant to insure compliance with the DEA's  
25 regulations; is that fair?

1           A.       That is -- yes, that is one of the  
2 aspects.

3           Q.       All right. You conducted  
4 investigations like that when you were a diversion  
5 investigator at DEA, right?

6           A.       I did.

7           Q.       I want to ask you a couple of  
8 questions about some testimony from the DEA on how  
9 the DEA conducts those investigations. But my  
10 first question is, did you read the deposition  
11 transcript of Claire Brennan in this case?

12          A.       I did.

13          Q.       Did you read the entire thing?

14          A.       I did.

15          Q.       You understand that Ms. Brennan is a  
16 section chief in Diversion Control -- in the  
17 Diversion Control Division of the DEA?

18          A.       Yes, I am aware of that.

19          Q.       All right. I am happy to show you  
20 the testimony, but I am going to see if we can do  
21 this quicker.

22                    Would you agree with me that DEA  
23 investigators can talk to whoever they want to at a  
24 company to get their questions answered?

25                    MS. KNIGHT: Objection to form.

1 Ms. Swift, I just want to clarify, are you just  
2 asking him questions or are you asking about him  
3 about testimony that you are not showing him?

4 MS. SWIFT: I am just -- well, I am  
5 trying to be transparent and let him know -- I am  
6 happy to show him this. I am just asking him  
7 questions right now. If we need to, I will pull up  
8 Ms. Brennan's testimony.

9 Q. (BY MS. SWIFT:) But let's just  
10 forget about Ms. Breannan for now, Mr. Rafalski,  
11 and I will just ask you the questions, okay?

12 A. Okay.

13 Q. Would you agree that DEA  
14 investigators, when they go on site at a  
15 distribution center, they can talk to whoever they  
16 want to, to get their questions answered?

17 A. I don't know that I would agree with  
18 that. I have never done one where I demanded to  
19 talk to a specific person, so I'm not fully in  
20 agreement with that. That is not saying that it  
21 wouldn't occur, but I don't think that is something  
22 within the regulation, that I could demand to speak  
23 to someone.

24 Q. Well, you are -- you are entitled to  
25 get your questions answered; is that fair?

1           A.           I think that is a fair statement, but  
2           not that I -- I would demand to do it at a specific  
3           person, if I understand your question properly.

4           Q.           If -- well, okay. I will -- I  
5           will -- I will just cut to the chase and show you  
6           Ms. Brennan's testimony. Hold on just a sec. This  
7           will be WAG 5.

8                       (WAG Exhibit 5 was marked for  
9                       identification.)

10          Q.          (BY MS. SWIFT:) While we are  
11          waiting, Mr. Rafalski, would you agree with me that  
12          DEA investigators can look at whatever company  
13          documents they need to in order to answer their  
14          questions during a cyclic investigation?

15                      MS. KNIGHT: Objection to form.

16          A.          I would not agree with that.

17          Q.          (BY MS. SWIFT:) All right. Do you  
18          see I've got on the screen Ms. Brennan's deposition  
19          from November of last year?

20          A.          I do.

21          Q.          Then go to Page 31. Do you  
22          understand that Ms. Brennan testified as a 30(b)(6)  
23          witness on behalf of DEA?

24          A.          I do. Can I make a clarification on  
25          that last answer, not "I do," but the one previous,

1 about the review of records?

2 Q. Sure.

3 A. So during a cyclic investigation or  
4 an inspection, registrants sign a Form 82, and that  
5 only gives a diversion investigator the right to  
6 look at specific required records. Outside of that  
7 you can ask to review those records, but the  
8 registrant would not have to comply with that, just  
9 so I can clarify my answer.

10 Q. All right. I am showing you Page 31  
11 of Ms. Brennan's transcript, and I just want to get  
12 your take on her answer at Lines 15 to 18. She  
13 says, "Diversion investigators would talk with  
14 whoever they needed to, whomever they needed to at  
15 the company, to answer specific questions." That  
16 was the DEA's testimony in this 30(b)(6)  
17 deposition. But you disagree with the DEA; is that  
18 right?

19 A. Well, the way that it is worded here,  
20 I guess that I would not be in disagreement. I  
21 understood your first question is that I could go  
22 in and demand to speak to someone about my specific  
23 question. But typically if you are in there, you  
24 can talk to -- to whoever, as long as they are  
25 agreeable by the registrant.

1           Q.       Then the next question is, "The  
2       diversion investigators would also look at  
3       documents, whatever documents they needed to, to  
4       answer their questions?"

5                    Answer: "Yes."

6                    Do you agree with the DEA about that?

7           A.       Back to my previous answer, I have  
8       been on site at -- and have asked to look at  
9       records, and I know that I have the right to look  
10      at the required records.

11                   There's some other recordkeeping that  
12      I would ask to see and I would be informed that  
13      they do not have to produce them, pursuant to a  
14      subpoena, but they do produce them and I review  
15      them.

16                   So I don't fully disagree with that,  
17      but it doesn't allow a diversion investigator to  
18      look at, let's say, financial records or certain  
19      records that are outside the scope of the  
20      requirements in this -- in the Code of Federal  
21      Regulations. So I guess that is kind of a waffling  
22      answer, but it's -- I don't specifically agree with  
23      this -- literally what she says.

24           Q.       Well, let me ask it this way,  
25      Mr. Rafalski. In your experience as a diversion

1 investigators, do registrants, distribution centers  
2 typically agree to show you the documents that you  
3 want to look at?

4 A. Yes. But generally speaking, I only  
5 ask to see documents that I know that they are  
6 required to keep pursuant to the Code of Federal  
7 Regulations.

8 Q. Do registrants typically show you the  
9 documents that you need in order to do your job as  
10 an investigator?

11 A. Yes.

12 Q. Okay. And that is important for  
13 DEA's enforcement role, would you agree with me, to  
14 ensure that DEA's regulations are being followed,  
15 it is important to be able to see the documents that  
16 you need to see in order to do that?

17 A. I would agree with that.

18 Q. Okay. I want to show you her  
19 testimony on Page 20. Starting at Line 2, I asked  
20 Ms. Brennan, "Do you believe that the diversion  
21 investigators at the DEA do a careful, thorough job  
22 when documenting their findings during  
23 investigations?"

24 "Answer: DEA expects that an  
25 investigation would be documented."

1 Do you agree with that?

2 A. I do.

3 Q. And that is important too, right, to  
4 document issues if you find them?

5 A. I agree, that is an -- an important  
6 obligation.

7 Q. Do you agree that DEA does document  
8 its investigations and issues that are found during  
9 those investigations in investigation reports?

10 MS. KNIGHT: Objection to form.

11 A. I don't know that I am qualified to  
12 answer that statement because it is kind of  
13 something that the DEA would answer.

14 Just in regards to my knowledge of my  
15 time working in Detroit, I would say generally that  
16 is an accurate statement. But there's always times  
17 when you might find a shortcoming in a report now  
18 and then when you are reviewing them.

19 Q. (BY MS. SWIFT:) You -- so you  
20 testified you read Ms. Brennan's deposition, so you  
21 understand that Ms. Brennan testified about DEA's  
22 investigations of several of Walgreens'  
23 distribution centers, right, sir?

24 MS. KNIGHT: Objection to form.

25 A. Yes, generally. I don't have like a

1 great recollection of it, but I --

2 Q. (BY MS. SWIFT:) Understood.

3 A. -- I recall reading it and what the  
4 basis for the deposition was.

5 Q. DEA allowed us, they gave us a Touhy  
6 authorization, to ask Ms. Brennan about more than a  
7 dozen of DEA's investigation reports at her  
8 deposition.

9 Is that consistent with your  
10 recollection, having read the deposition?

11 A. It is.

12 Q. All right. Now I am going to show  
13 you Page 242 -- I don't know if I can go right to  
14 it, so I am just going to scroll quickly.

15 MS. KNIGHT: Ms. Swift, if we are  
16 going to keep going through Ms. Brennan's  
17 testimony, we need some time to go through this  
18 deposition so that Mr. Rafalski can put all of this  
19 in context.

20 If you want to ask him questions, I  
21 have no objection to that, but if we are just going  
22 to go through Ms. Brennan's testimony, then we need  
23 some time for him to look at that and --

24 MS. SWIFT: I have got like fewer  
25 than ten questions left on just one other issue in

1     this deposition which he had and read before he  
2     issued his report and he talks about in his report,  
3     so I think he has had the opportunity to give  
4     whatever context he wants, and this is my  
5     opportunity to cross-examine about -- him about  
6     what he said in his report.

7                     MS. KNIGHT: To be fair, we are  
8     working without copies of these exhibits, and you  
9     are just picking and choosing out of someone else's  
10    testimony. He testified he read lots of  
11    depositions. And so if you are going to keep going  
12    through the deposition testimony, he needs a copy  
13    of that deposition in front of him so that he can  
14    put it in context.

15                    MS. SWIFT: You have got a copy of  
16    it. I mean, do you want me to email it to him? He  
17    is -- it is in the Exhibit Share so you can grab  
18    it.

19                    MS. KNIGHT: So --

20                    MS. SWIFT: I have only got a handful  
21    of questions left on this.

22                    MS. KNIGHT: If you want to take the  
23    time that doesn't come off our time, doesn't count  
24    towards his deposition, and allow him to review it  
25    in context, I'm fine with that. If you just want

1 to ask him questions, that is fine too. But if we  
2 are going to keep going through Ms. Brennan's  
3 testimony, he needs a copy in front of him so that  
4 he can read it, and he doesn't have a copy in front  
5 of him.

6 MS. SWIFT: I am going to ask him  
7 about Page 242, and then I am going to be done.

8 Q. (BY MS. SWIFT:) Do you have Page 242  
9 in front of you, Mr. Rafalski?

10 A. I do.

11 MS. KNIGHT: He has -- he has your  
12 screen-share in front of him, is what he has.

13 MS. SWIFT: And I am happy to -- I --  
14 we would be done with the questioning if you would  
15 just let me do it. I mean, I am happy to go to  
16 Page 241 and let him what -- read whatever he  
17 wants. It's -- I -- everything else I am going to  
18 ask him about is on this page.

19 Q. (BY MS. SWIFT:) Starting at Line 9  
20 of Page 242, Mr. Rafalski, I was asking her about  
21 the investigation reports that you have access to  
22 and that she was authorized to testify about on  
23 behalf of DEA. And I asked her, "In all of those  
24 investigation reports for those three distribution  
25 centers, we didn't see a single violation relating

1 to due diligence on suspicious orders, correct?"

2 Answer: "Again, that that's correct,  
3 but it would be how we were trained."

4 Question: "Often we didn't see  
5 anything about Walgreens' due diligence procedures  
6 in these reports, correct?"

7 Answer: "That's correct."

8 My question for you, sir, is whether  
9 you read and considered this testimony on behalf of  
10 DEA in forming your opinions against Walgreens in  
11 this case?

12 MS. KNIGHT: Same objection.

13 A. Can I just read a little bit of the  
14 next page?

15 MS. KNIGHT: And she is saying,  
16 "Again."

17 (Pause.)

18 A. Well, I don't have a disagreement  
19 that that is what she said in her testimony.

20 Q. (BY MS. SWIFT:) My question for you  
21 is different, sir. Did you read and consider this  
22 testimony in forming your opinions against  
23 Walgreens in this case?

24 A. I did not.

25 Q. Did you read --

1           A.       I -- well, let me correct that. I  
2 read the deposition, so I guess I took it into  
3 consideration. It was part of what I reviewed in  
4 forming my opinions, so it is not that I didn't  
5 take it into account.

6           Q.       You disregarded the view of the DEA  
7 with respect to its conclusions about Walgreens'  
8 due diligence in forming your opinions in this  
9 case; is that correct?

10                   MS. KNIGHT: Objection to form.

11           A.       No. I wouldn't say that is an  
12 accurate statement.

13           Q.       (BY MS. SWIFT:) Well, you said  
14 you -- well, do you agree with Ms. Brennan --  
15 strike that. Let me ask this next prefatory  
16 question.

17                   Did you read any of DEA's  
18 investigation reports of Walgreens' distribution  
19 centers, the ones that Ms. Brennan was testifying  
20 about in her deposition?

21           A.       I believe I did read some of them.

22           Q.       If --

23           A.       I don't recall if I read all of them.

24           Q.       You didn't cite them in your report;  
25 would you agree with that?

1           A.       Weren't they exhibits to the  
2 deposition?

3           Q.       They were exhibits to the deposition.  
4 They were not cited in your report, is what I am  
5 saying.

6           A.       Okay. Well --

7                   MR. FULLER: Well, hold on, let's  
8 clarify the record because the deposition is cited  
9 in his reliance materials with all exhibits, so  
10 they would be recited in his reliance materials,  
11 Kate.

12                   MS. SWIFT: I'm going to object to  
13 the speaking objection. You are feeding  
14 Mr. Rafalski testimony, Mike. I would like to get  
15 the witness' answer to my question.

16           Q.       (BY MS. SWIFT:) My question is  
17 simple, Mr. Rafalski. Did you read DEA's  
18 investigation reports of Walgreens' three  
19 distribution centers in forming your opinions on --  
20 about Walgreens in this case?

21                   MS. KNIGHT: Asked and answered.

22           A.       I did read them, and they were --  
23 they were included as part of the exhibits to the  
24 deposition. I believe they were cited, and I did  
25 read -- I don't recall if I read all of the

1 reports. It seemed like there were maybe even more  
2 than three. And I did take that into account when  
3 I did my opinion.

4 Q. (BY MS. SWIFT:) You just disregarded  
5 the DEA's conclusion about Walgreens' performance  
6 of due diligence in forming your opinions in this  
7 case; is that fair?

8 MS. KNIGHT: Objection to form.

9 A. Well, I am not sure that -- if --  
10 that the opinions on three reports would be  
11 significant enough to take into account when I have  
12 reviewed many other records that would be in  
13 conflict with that. So that may be Ms. Brennan's  
14 opinion or your opinion based on her review of  
15 three reports, but I don't think that provides an  
16 overall basis for me to change or modify my  
17 opinion.

18 Q. (BY MS. SWIFT:) Just to clarify, it  
19 was more than a dozen reports on three distribution  
20 centers. Does that change your answer at all?

21 A. No, it does not.

22 Q. Okay. You can't say, sitting here  
23 today, whether DEA ever documented problems with  
24 Walgreens' due diligence in any of those reports,  
25 can you?

1           A.       I don't recall if they did or did  
2 not.

3           Q.       So when Ms. Brennan, testifying on  
4 behalf of DEA, testified under oath that DEA did  
5 not document any due-diligence violations in its  
6 more than a dozen reports of investigations of  
7 Walgreens distribution centers, you don't have any  
8 basis to disagree with that, correct, sir?

9                   MS. KNIGHT: Objection to form. And  
10 if you would like to talk to Mr. Rafalski about the  
11 Brennan deposition, you really need to give him a  
12 copy.

13          A.       But I just -- I really can't respond  
14 to that because I am not sure that those reports,  
15 without going back and reviewing them, that they  
16 specifically talked about the review of  
17 due-diligence records at Walgreens.

18          Q.       (BY MS. SWIFT:) Understood. And my  
19 only question is, sitting here today, without  
20 taking the time to reread a three hundred page  
21 deposition transcript, you don't have any basis to  
22 disagree with the statement that DEA did not  
23 document problems with Walgreens' due diligence,  
24 correct, sir?

25          A.       I don't agree or disagree, Ms. Swift.

1           Q.       Understood. When you were a  
2 diversion investigator at DEA, you yourself  
3 investigated Walgreens' distribution centers and  
4 you didn't document any due-diligence violations  
5 there either, correct?

6           A.       I did not. I cited them for a  
7 defective suspicious order monitoring system.

8           Q.       But you didn't document any problems  
9 with due diligence, right, sir?

10          A.       I don't recall seeing any due  
11 diligence, because my recollection is the personnel  
12 onsite at the distribution center was deferring  
13 everything to their headquarters.

14          Q.       I understand you have a story you  
15 would like to tell now that you have been hired by  
16 the plaintiffs' lawyers to offer opinions in this  
17 case. My question was different. When you were a  
18 diversion investigator at DEA, you investigated  
19 Walgreens' distribution centers and you never once  
20 documented problems with Walgreens' due diligence,  
21 correct, sir?

22                   MS. KNIGHT: Objection to form.  
23 Asked and answered.

24          A.       I don't -- when I was at the  
25 Walgreens -- and I don't know that "Walgreens"

1 would be -- would be would be accurate, I don't  
2 have a recollection if I did or did not document  
3 due diligence. I don't have a recollection of  
4 doing that, but I can't be certain without seeing  
5 the report.

6 Q. (BY MS. SWIFT:) You have testified a  
7 number of times in this litigation that it is  
8 important to document issues relating to suspicious  
9 orders, right, sir?

10 A. I have.

11 Q. And do you recall that you noted in  
12 your report that Walgreens stopped distributing  
13 opioids to its Lake and Trumbull County pharmacies  
14 in April of 2014? It is at Page 80 if you want to  
15 look at it. But does that -- does April 2014 sound  
16 right to you?

17 A. I was -- Schedule IIs?

18 Q. All opioids, Schedule IIs, Schedule  
19 IIIs, all of them.

20 A. I think IIs were March of '13, but --  
21 what page again? I'm sorry.

22 Q. Page 80. And you're correct, sir. I  
23 was talking about like the latest possible date  
24 Walgreens ever distributed an opioid into Lake and  
25 Trumbull County.

1           A.       You say it is on Page 80?

2           Q.       Yep.

3           A.       Okay. I agree.

4           Q.       Walgreens never distributed an opioid  
5 to Lake and Trumbull County after April of 2014,  
6 correct?

7           A.       I would agree.

8           Q.       Is it your opinion that Walgreens  
9 should have retained historical due-diligence  
10 documents for shipments it hasn't made in at least  
11 seven years, even though it ceased all distribution  
12 activities years ago?

13          A.       Yes, I would say they should retain  
14 those, because they still -- those pharmacies are  
15 still Walgreens pharmacies and they are still  
16 engaged in the purchase and dispensing of  
17 controlled substances. So -- and I would believe  
18 that they would probably have interactions with the  
19 distributors that now handle those pharmacies. So  
20 I would have an expectation they would -- they  
21 would -- they would retain those records.

22          Q.       My question is different, sir. I am  
23 talking about due-diligence records relating to  
24 Walgreens' distribution of opioids to its own  
25 pharmacies, which Walgreens has not done since

1 2014. Is it your opinion in this case that  
2 Walgreens should have retained due-diligence  
3 records from the time when it was distributing  
4 opioids, which it stopped more than seven years  
5 ago, up until the present day?

6 MS. KNIGHT: Asked and answered.

7 A. Yes, same answer, because they  
8 continue to purchase opioids from a different  
9 vendor. So I think it would be important to retain  
10 those records.

11 Q. (BY MS. SWIFT:) It would be  
12 important when Walgreens is purchasing opioids from  
13 a different vendor in 2021 to have due diligence  
14 records related to its own distribution to that  
15 pharmacy in 2010?

16 MS. KNIGHT: Asked and answered.

17 A. Yes, I believe so.

18 Q. (BY MS. SWIFT:) What is the basis  
19 for that opinion?

20 A. Because it is a historic record of  
21 what actions were taken by Walgreens in regards to  
22 one of their pharmacies, and I think it may be of  
23 some importance to another vendor who may contact  
24 Walgreens, especially if they are distributing to a  
25 Walgreens pharmacy, and want to look at the history

1 of the conduct of that pharmacy.

2 I just think it is just part of the  
3 history, and I think that is always important when  
4 you are reviewing.

5 Q. That explanation that you just  
6 provided is not anywhere in your report, correct,  
7 sir?

8 A. I think I have testified to that  
9 before. Specifically to say that Walgreens should  
10 have retained documents from back to that time  
11 period, I don't think it specifically says that.

12 Q. Okay. Do you recall that there was  
13 an investigation by DEA of a Walgreens distribution  
14 center in Perrysburg, Ohio, in 2013?

15 A. Let me look at my report. One  
16 second.

17 MS. KNIGHT: Page 82.

18 Q. (BY MS. SWIFT:) Page 82.

19 A. Yes.

20 Q. Did you have any personal involvement  
21 in that investigation as a diversion investigator  
22 at DEA?

23 A. I did not.

24 Q. You are not going to come to trial  
25 and talk about anything about that investigation

1       that is not reflected in your report, correct?

2               A.       No. I did not participate in this  
3       investigation.

4               Q.       Okay. All right. On Page 83 of your  
5       report, you have a chart labeled --

6                       MR. FULLER: Kate, it is almost  
7       12:45. When do you plan on stopping for lunch?

8                       MS. SWIFT: As soon as I am done,  
9       which I am hoping is going to be in the next  
10      fifteen minutes.

11                      MR. FULLER: Well, let's plan on  
12      breaking for lunch at 12:45. I mean, it is well  
13      after noon.

14              Q.       (BY MS. SWIFT:) Do you see the chart  
15      on 83 labeled "Suspicious Orders Reported In CT3  
16      Jurisdictions"?

17              A.       I do.

18              Q.       You in that chart refer to "Rigid  
19      Formula Report (Customer Grouping Formula)," and  
20      then "Rigid Formula Reports (Chemical Handlers  
21      Manual Appendix E-3)." You don't cite any  
22      documents, correct?

23                      MS. KNIGHT: Objection to form.

24              A.       I think contained in my report talks  
25      about the SOM system that utilized those, but

1 specifically for this chart, I do not.

2 Q. (BY MS. SWIFT:) Walgreens doesn't  
3 have any documents that you have seen that are  
4 called rigid formula reports, right?

5 A. No, I don't think they have produced  
6 any in the litigation.

7 Q. My question was different, sir.  
8 Well, you have never seen a document in -- a  
9 Walgreens document that had the title or that was  
10 called a rigid formula report, right?

11 A. Oh, that's correct.

12 Q. Who came up with that term, "rigid  
13 formula report"?

14 A. I believe I did.

15 Q. Are you aware that Walgreens produced  
16 reports in this litigation called suspicious  
17 controlled drug order reports?

18 A. Not specifically by that title.

19 Q. Did you know that Walgreens submitted  
20 those reports to the DEA for a number of years?

21 A. I knew they were submitting reports  
22 to the DEA. I did -- I don't recall seeing that  
23 specific title on them.

24 Q. Did you review any of Walgreens'  
25 suspicious controlled drug order reports in forming

1 your opinions in this case?

2 A. Right now I don't have a recollection  
3 of doing that.

4 Q. Okay. If you didn't cite to any in  
5 your report, is it fair to say you didn't review  
6 them?

7 A. Ms. Swift, I looked at so many  
8 records, right now I'm not having a recollection of  
9 reviewing those.

10 Q. Is it fair to say that you didn't do  
11 any comparison of the orders Walgreens reported to  
12 DEA on its suspicious controlled drug order reports  
13 to the orders that were flagged using your flagging  
14 methods?

15 A. That's a correct statement,  
16 Ms. Swift.

17 Q. So you would have no idea how many --  
18 how often orders that you flagged were also  
19 included on a -- on a Walgreens suspicious order  
20 report that was reported to the DEA?

21 MS. KNIGHT: Objection to form.

22 A. I would agree with that statement.

23 Q. (BY MS. SWIFT:) All right. Turn to  
24 Page 94 of your report, please.

25 A. I am there.

1           Q.       There are three paragraphs on Page 94  
2       about audits related to Walgreens, and I'm not  
3       going to read them into the record, these  
4       paragraphs, because they are privileged and we  
5       objected to their production on their basis. And I  
6       am going to ask that this portion of the transcript  
7       be marked highly confidential, but I do want to ask  
8       you a couple of questions about this page of your  
9       report.

10                       (The following testimony has been  
11                       designated as confidential by  
12                       counsel.)

13           Q.       (BY MS. SWIFT:) Have you reviewed  
14       the documents that you are talking about in this  
15       section of your report, these audits?

16           A.       Yes, I believe I have.

17           Q.       Who wrote them?

18           A.       I don't recall since it was so long  
19       ago.

20           Q.       Do you know what they did to conduct  
21       the audits?

22           A.       No, I do not. That's -- like I said,  
23       it -- this has been a long time ago with the --

24           Q.       And that is not -- that is not  
25       reflected in your report, right, sir?

1           A.       That's correct.

2           Q.       Do you know what documents the people  
3 who prepared those audits reviewed?

4           A.       Not without going and looking at  
5 the -- at the actual documents, I do not.

6           Q.       And none of that is reflected in your  
7 report, right?

8           A.       That I would need to review the  
9 documents to --

10           MS. KNIGHT: And I'm going to object.  
11 To be fair, the documents are cited in his report.  
12 I'm not sure what you mean.

13           MS. SWIFT: I am going to object  
14 again to the speaking objections and the coaching  
15 of the witness. I'm trying to finish this so we  
16 can have lunch.

17           MS. KNIGHT: I'm not coaching the  
18 witness, Ms. Swift.

19           MS. SWIFT: You are coaching the  
20 witness, but I will ignore it.

21           Q.       (BY MS. SWIFT:) You don't -- you  
22 don't reflect in the narrative of your written  
23 report what documents the auditors reviewed or who  
24 they talked to, right, sir?

25           A.       My report does not detail that, that

1 is correct.

2 Q. Your report does not detail whether  
3 the managers at the Walgreens' distribution  
4 centers, the folks on the ground doing the work day  
5 to day agreed or disagreed with these audits,  
6 correct, sir?

7 A. I do not state that in my report,  
8 that is correct.

9 Q. You -- on Page 95, you reference  
10 "Perrysburg DC Manager Steve Kneller"; do you see  
11 that?

12 A. I do.

13 Q. You reference his deposition just a  
14 few pages from it. Did you read the entire  
15 deposition transcript or just the parts that you  
16 cited?

17 A. I don't recall.

18 Q. Did you write this section of your  
19 report on Pages 94 and 95 about the Walgreens  
20 audits?

21 A. I did.

22 (Reporter clarification.)

23 Q. (BY MS. SWIFT:) On the Walgreens  
24 audits?

25 A. Yes, I did.

1 Q. Did you write it all by yourself?

2 MS. KNIGHT: Counsel, are we really  
3 going to get into the work product of working on  
4 expert reports?

5 MS. SWIFT: I'm not asking anything  
6 different than anybody has ever asked in any of  
7 these depositions. I'm not asking for a draft. I  
8 am just asking if he wrote his report.

9 MS. KNIGHT: And he has answered yes.

10 A. I -- it may have went back and forth  
11 in draft form a couple times, but this is my report  
12 and these are my words.

13 Q. (BY MS. SWIFT:) Is all of the  
14 supporting material for this section of your report  
15 on Pages 94 and 95 cited in the footnotes?

16 A. I believe it is, yes.

17 Q. In forming your opinions, you did not  
18 review any DEA report of investigation about  
19 Walgreens' dispensing of opioids, correct, sir?

20 A. Could you say that one more time,  
21 Ms. Swift?

22 Q. You did not review any DEA reports  
23 about Walgreens' dispensing of opioids in forming  
24 your opinion?

25 A. Dispensing from a pharmacy?

1 Q. Yes.

2 A. No, I did not.

3 Q. Did you ever visit a pharmacy in Lake  
4 or Trumbull County for purposes of preparing your  
5 report?

6 A. I did not.

7 Q. And you never did the kind of  
8 investigation you recommended to Mr. Crowley at  
9 Purdue, correct?

10 A. That would be a much earlier time  
11 frame, but, no, I did not go and sit and do any  
12 observations at a Walgreens, that is a correct  
13 statement.

14 Q. Or any other pharmacy in Lake or  
15 Trumbull County, right, sir?

16 A. That's correct.

17 Q. You don't have any idea how many of  
18 your flagged orders went to fill legitimate  
19 prescriptions, right, sir?

20 A. Well, my flagged orders were flagged  
21 for a specific reason. So it didn't make a  
22 determination of what was diverted or what was not  
23 diverted, but just my opinion is, based on the lack  
24 of the due diligence on the first flagged order,  
25 that more likely than not that those flagged orders

1       were diverted, but not specific to any specific  
2       prescription.

3               Q.       Sir, I would like you to listen to my  
4       question. That wasn't my question at all.

5                       My question was whether you have any  
6       idea how many of the orders that you flagged in  
7       your flagging analysis on the distribution side  
8       went to fill legitimate prescriptions?

9                       MS. KNIGHT: Asked and answered.

10              A.       I don't have any specific knowledge  
11       to answer that specific question, Ms. Swift.

12              Q.       (BY MS. SWIFT:) You never made any  
13       attempt to connect your flagged orders with any  
14       specific prescription?

15              A.       That is a correct statement. I did  
16       not.

17              Q.       All right.

18                       MS. KNIGHT: Are we at a good  
19       stopping place?

20                       MS. SWIFT: I have got one more  
21       question. I know that is a dangerous thing for a  
22       lawyer to say.

23                       MS. KNIGHT: Okay.

24              Q.       (BY MS. SWIFT:) I will try to do  
25       without pulling up the document to make it go

1 faster. Your lawyers produced to us an invoice for  
2 you in this case, and on Page 9, it reflected five  
3 hours of work on Walgreens.

4 Is it true that the sum total of time  
5 you have spent focusing on Walgreens for purposes  
6 of your Lake and Trumbull report was five hours?

7 MS. KNIGHT: Objection to form.

8 A. No, I think -- I think later  
9 billings, there were a lot of them that were  
10 working on the draft report, I think, maybe in  
11 that, that was specific to a project or something I  
12 was looking at.

13 But I think there's plenty of  
14 billings that -- where I was drafting the report or  
15 working on finalizing the report that would have  
16 been some time spent on Walgreens too.

17 Q. (BY MS. SWIFT:) Are you saying that  
18 we -- there's other bills out there that we just  
19 don't have, or that that is mixed in with other  
20 time and it just doesn't -- we can't tell that it  
21 is time you spent on Walgreens?

22 A. The latter. There is -- I think -- I  
23 think later in the drafting, there is a lot of them  
24 that just say "drafting report," where I spent a  
25 lot of time and I didn't keep track of specific

1       what area that I was working on.

2               Q.       Do you disagree with me that as far  
3       as I can -- as far as it is possible to tell from  
4       your invoice, it only reflects five hours specific  
5       to Walgreens?

6               MS. KNIGHT:   Objection to form.

7               A.       My billing may reflect that, but I  
8       think there's several areas where I billed that  
9       said "drafting report" where I was working on  
10      several different areas of my report, especially in  
11      the last month or two.

12              Q.       (BY MS. SWIFT:)   What is your best  
13      estimate of how much time you spent on Walgreens in  
14      forming your opinions for the Lake and Trumbull  
15      County report?

16              A.       I really don't have a guess on that,  
17      Ms. Swift.

18              Q.       Can you ballpark it for me?

19              A.       No.   I just know my cumulative hours.  
20      I know that I already had done a significant amount  
21      of work on Walgreens already, so it would be not as  
22      many hours as the three defendants that I had not  
23      offered an opinion on.   I spent more time with them  
24      than Walgreens, but I don't -- I can't give you an  
25      exact number, Ms. Swift.

1 MS. KNIGHT: Is now a good time?

2 MS. SWIFT: I apologize. One more  
3 that I do have to ask.

4 Q. (BY MS. SWIFT:) Mr. Rafalski, have  
5 you spent any time speaking to Dr. McCann about --  
6 leading up to and about the opinions in your Lake  
7 and Trumbull County report specifically?

8 A. Yes.

9 Q. When did you speak to him and for how  
10 long?

11 A. I don't remember the date, but I  
12 spoke to him while I was writing my report, had a  
13 telephone conference, I don't want to guess, but at  
14 least an hour or more, and then I spoke to him  
15 recently about a couple questions after my report  
16 was -- and before my testimony.

17 Q. So am I correct that you had one  
18 conversation with Dr. McCann about the Lake and  
19 Trumbull County report of about an hour?

20 A. One that I can recall. I have had  
21 several conversations, but there's one specifically  
22 that came up that we had a conversation. I am not  
23 saying there aren't more, but only one I can recall  
24 right now sitting here.

25 Q. What did you discuss with Dr. McCann

1 during that conversation?

2 A. We discussed the methodologies and  
3 specifically we spent some time discussing the new  
4 methodology, the thirty-day trailing. That was one  
5 of the areas that we needed to discuss.

6 Q. What specifically about the  
7 thirty-day trailing method did you discuss with  
8 Mr. McCann?

9 A. The -- how the thirty-day was  
10 treated. When you read the Masters policy, it was  
11 whether to treat the thirtieth day or the  
12 thirty-first day as part of the trailing. I can  
13 explain that further if that doesn't make sense to  
14 you.

15 Q. No, I understand what you are saying.  
16 Is there anything else that you discussed with  
17 Dr. McCann relating to your Lake and Trumbull  
18 County report?

19 A. I don't recall. I know we went over,  
20 I think, how to utilize some of the data in regards  
21 to ARCOS or nonARCOS. There were several areas,  
22 but the one that I remember we spent the most time  
23 on was discussing the thirty-day trailing.

24 MS. SWIFT: Okay. I don't have  
25 anything else right now. Thanks, Mr. Rafalski.

1           A.       You are welcome.

2                   THE VIDEOGRAPHER: The time is now  
3 approximately 12:51 p.m. We are off the record.

4                   (Whereupon, a break was had from  
5 12:51 p.m. EDT until 1:53 p.m. EDT.)

6                   THE VIDEOGRAPHER: The time is now  
7 1:53 p.m. We are now on the record in the  
8 deposition of James Rafalski.

9  
10 EXAMINATION BY MS. MCENROE:

11           Q.       Good afternoon, Mr. Rafalski. We met  
12 just before we came on the record a moment ago. My  
13 name is Elisa McEnroe. I am an attorney with  
14 Morgan, Lewis & Bockius on behalf of Rite Aid. And  
15 we have not met before today, correct?

16           A.       That's correct. Good afternoon, Ms.  
17 McEnroe.

18           Q.       Good afternoon. I would like to  
19 direct your within your report on Track 3 to Page  
20 108, if you have that in front of you.

21           A.       Okay.

22           Q.       This is -- there's a section that  
23 starts there that says Rite Aid; do you see where  
24 that is?

25           A.       I do.

1           Q.       And you discuss Rite Aid throughout  
2 this report using the singular. Do you have an  
3 understanding that there are actually a couple of  
4 Rite Aid entities that have been sued in this case,  
5 there are a couple of Rite Aid defendants?

6           A.       I do not. I just used Rite Aid  
7 throughout my report.

8           Q.       Sure. So let's talk about it a  
9 little bit more specifically. In your report here,  
10 you list distribution center, and then you have two  
11 distribution centers listed there, do you see that?

12          A.       Liverpool D.C. in New York and  
13 Perryman D.C. in Maryland.

14          Q.       Exactly. Do you have an  
15 understanding that each of those would have their  
16 own DEA registration?

17          A.       I do.

18          Q.       And those are each their own  
19 entities; is that fair, do you understand that?

20          A.       Yeah, they're separate locations,  
21 separate DEA registrations, but they're both Rite  
22 Aid distribution centers, correct?

23          Q.       Correct. I'm not questioning that,  
24 yeah. And do you understand --

25                   MS. MCENROE: Oh, Ms. Knight, you're

1 muted. I don't know if that was intentional or  
2 not.

3 MS. KNIGHT: I'm talking through -- I  
4 have to talk through Mr. Rafalski's speaker.

5 MS. MCENROE: Oh, oh, oh, okay.  
6 Great.

7 Q. (BY MS. MCENROE:) And so,  
8 Mr. Rafalski, you also understand that there are  
9 dispensing related claims in this litigation  
10 regarding pharmacy dispensing? I think we talked  
11 about that this morning?

12 A. There are.

13 Q. And there are Rite Aid entities that  
14 own pharmacies?

15 A. Correct.

16 Q. You would understand that? And they  
17 would have their own DEA registrations going on,  
18 those pharmacies, separate from the DEA  
19 registrations of the distribution centers; is that  
20 fair?

21 A. That would be correct. Every  
22 location that handles controlled substances at that  
23 registered location at that address would have a  
24 DEA registration.

25 Q. Great. And for that type of

1 registration as well, right, so a distribution  
2 center would have a distribution registration and a  
3 pharmacy would have a pharmacy registration; is  
4 that fair?

5 A. They would have a business activity,  
6 yes, but they all would be DEA registrations, just  
7 different business activities.

8 Q. You're not accusing Rite Aid of  
9 having distributed without the proper DEA  
10 registration in this case, are you?

11 A. No, I am not.

12 Q. You're not making that allegation  
13 against anybody in this case, are you?

14 A. That's correct. I'm not aware that  
15 any distribution occurred while they were  
16 unlicensed.

17 THE REPORTER: Unlicensed or on  
18 licensed?

19 THE WITNESS: Unlicensed.

20 THE REPORTER: Thank you.

21 Q. (BY MS. MCENROE:) And you don't have  
22 any reason to think that Rite Aid's distribution  
23 centers did not go through the preregistration  
24 investigation you discussed both in your report and  
25 today in your deposition, correct?

1           A.       I have not reviewed any records that  
2       would definitively tell me that, but it would be  
3       highly unusual that they received a registration  
4       without a preregistration process.

5           Q.       And you have no reason to think that  
6       that happened that way?

7           A.       That's correct.

8           Q.       Correct?

9           A.       I don't have any information to say  
10      either way, but if you're asking me to make an  
11      assumption, I know not to do that, but I would find  
12      it unusual that they would be registered without a  
13      preregistration process.

14          Q.       And is that also the same of there  
15      having been cyclic investigations of the Rite Aid  
16      distribution centers, that you would presume that  
17      that had happened as well, being that they were  
18      registered?

19                   MS. KNIGHT: Objection to the form.

20          A.       I would be a little bit confident,  
21      only because in some areas, locations of the  
22      country, depending on how busy they are, sometimes  
23      they're put off for some time. I would say they  
24      would have them, but I don't know that they would  
25      be as regular as people think they would have

1 occurred.

2 Q. (BY MS. MCENROE:) Did you look to  
3 see?

4 A. How often there were registration --  
5 or cyclics?

6 Q. About the cyclic investigations?

7 A. I did not. I do not have access to  
8 DEA records.

9 Q. And you didn't look at the DEA  
10 records that have been produced in this case  
11 pertaining to cyclic investigations either?

12 A. For Rite Aid, I don't recall  
13 reviewing any cyclic DEA 6s.

14 Q. Did you ask if there were any?

15 A. I didn't specifically ask. But if  
16 there were documents, I should have been provided  
17 them. I -- and maybe they are in my folder. I  
18 don't know if they're in my disclosure, I would  
19 have to look. I just don't recall offhand looking  
20 at them, any DEA 6s.

21 Q. So we were talking just a minute ago  
22 about the two distribution entities that are  
23 defendants in this case. And you described them as  
24 Liverpool and Perryman. And those are fine  
25 description names for me as well to use.

1                   And you would agree that they have  
2       suspicious order monitoring obligations, those two  
3       entities, correct?

4                   A.        I do.

5                   Q.        Are you advancing opinions that any  
6       of Rite Aid's pharmacy registrants, any of those  
7       defendants that are pharmacies solely have  
8       suspicious order monitoring obligations on them?

9                   A.        That's not a regulatory requirement  
10      of a pharmacy to have a suspicious order monitoring  
11      system, so I am not.

12                  Q.        Do you have an understanding that  
13      Rite Aid did not distribute Schedule II drugs?

14                  A.        Correct.   Only hydrocodone.

15                  Q.        And when you say only hydrocodone --  
16      go ahead.

17                  A.        Part of the litigation, I'm sorry,  
18      the one opioid that I looked at in my opinion was  
19      the hydrocodone.   They did Schedule III through Vs.

20                  Q.        And when you mention the hydrocodone,  
21      just so that we're clear on the record and we're  
22      mentioning schedule, so hydrocodone during the  
23      relevant time period was Schedule III; is that fair  
24      to say?

25                  A.        Yes, up until it was rescheduled.

1           Q.       And do you have an understanding or a  
2       recall of when Rite Aid stopped distributing? And  
3       you can take a look if it's helpful to that Page  
4       108 where I directed you within your report. You  
5       have listed under transactional data, date range  
6       2006 to 2014 ARCOS, do you see that?

7           A.       Yes. It's just not specific to the  
8       date, to the end of the year in 2014, but that  
9       would be accurate as far as I'm concerned.

10          Q.       Sure. Into sometime in '14; is that  
11       fair?

12          A.       Yes. The rescheduling was I think in  
13       October of 2014.

14          Q.       And is it correct that oxycodone is  
15       Schedule II?

16          A.       It's correct, yes, ma'am.

17          Q.       And fentanyl is Schedule II?

18          A.       Yes, that is Schedule II.

19          Q.       Is it correct that hydrocodone is  
20       Schedule II?

21          A.       It is today, yes, ma'am.

22          Q.       Is it correct that hydromorphone is  
23       Schedule II?

24          A.       Yes, it is.

25          Q.       And morphine?

1           A.       Schedule II.

2           Q.       I'm almost done. I promise. Is it  
3 true that oxycodone is Schedule II?

4           A.       Yes, that's Schedule II.

5           Q.       And oxymorphone is Schedule II?

6           A.       Also Schedule II.

7           Q.       Tapentadol is Schedule II, if I said  
8 that correctly?

9           A.       I would have to look that one up.  
10 I'm not sure.

11          Q.       And methadone is Schedule II; is that  
12 correct?

13                   THE REPORTER: I'm sorry. I didn't  
14 hear an answer.

15                   (Record read.)

16          A.       Yes, it is.

17          Q.       (BY MS. MCENROE:) So you would agree  
18 with me that if you have discussions of oxycodone,  
19 for example, pertaining to Rite Aid, that would  
20 only be about any Rite Aid conduct as a customer,  
21 right, because we did not distribute -- Rite Aid  
22 did not distribute Schedule IIs?

23          A.       No. I do not agree with that.

24          Q.       So you think that -- strike that for  
25 a second. Let me just back up.

1                   So how do you think Rite Aid's  
2                   pharmacies got oxycodone?

3                   A.           I'm not saying they have oxycodone.  
4                   If I understood your question, you asked about the  
5                   obligations, correct?

6                   Q.           On the pharmacy entities, correct.

7                   A.           Well, I think corporately there's  
8                   some responsibility for Rite Aid because they're a  
9                   chain facility, they have chain pharmacies, and  
10                  they're purchasing Schedule II products from an  
11                  outside vendor, but they're well aware of what  
12                  their pharmacies are purchasing.

13                  So under the maintenance of effective  
14                  controls, I believe they have some responsibility  
15                  to monitor those drugs also.

16                  Q.           So let's take a look -- let's break  
17                  that down a little bit more. So we're going to go  
18                  within your report to Page 46. So we're going  
19                  to -- I think this is what you're referring to, if  
20                  I'm not mistaken, as an example. Tell me when  
21                  you're there.

22                  A.           Talking about the charts?

23                  Q.           Yep, talking about the charts. So  
24                  let's look at the first one there for Lake County  
25                  on Page 46, and this is under your methodology A.

1                   You see for Rite Aid in the flagged  
2 orders of oxycodone dosage units, you have NA  
3 listed there; is that correct?

4                   A.       That's correct.

5                   Q.       So then let's sort of keep your eye  
6 on that, but let's also flip at the same time to  
7 Page 51, 51. And you have a section starting with  
8 H there in the middle. Do you see that?

9                   A.       I do.

10                  Q.       That follows a sentence that says,  
11 "The following charts provide the results of each  
12 methodology applied to orders placed by each  
13 distributor's pharmacies to all distributors." Do  
14 you see that?

15                  A.       I do.

16                  Q.       So this Section H is applying the  
17 same methodology as you did in A, except now you're  
18 applying it for orders placed by each of the  
19 distributors' pharmacies; is that a correct  
20 understanding.

21                  A.       Yes. So it would be distributions by  
22 all pharmacies -- I mean, excuse me, by all  
23 distributors to Rite Aid pharmacies.

24                  Q.       And now if we look at that  
25 corresponding box in the Lake County chart in

1 Section H under oxycodone, you'll see that it says  
2 five million six hundred and sixty-four thousand  
3 one hundred, and then it says in parentheses,  
4 that's 94.7 percent of the total dosage units. Do  
5 you see that?

6 A. I do.

7 Q. So if I'm understanding correctly, in  
8 your report, in your methodology A, you're saying  
9 and acknowledging that Rite Aid did not have  
10 distribution centers that distributed any  
11 oxycodone, at least that had supporters that  
12 flagged there, right, and presumably because we  
13 didn't distribute it at all; is that fair to say?

14 A. I'm sorry. I thought you were done.  
15 So an NA would mean that there was no distribution.  
16 A zero would mean it identified no flagged orders,  
17 just for clarification.

18 Q. Sure. And then in looking in Section  
19 H, when we're taking into account the orders that  
20 Rite Aid placed with outside vendors, now you're  
21 flagging 94.7 percent, correct?

22 A. That's correct.

23 Q. Okay. And are you presuming to say  
24 that Rite Aid's pharmacies had a suspicious order  
25 monitoring obligation with respect to the oxycodone

1     that they were purchasing?

2             A.       No, I'm saying the Rite Aid, the  
3     actual entity of Rite Aid, the company, had an  
4     obligation to monitor those.

5             Q.       Right. But I think we talked about a  
6     little bit earlier, you have different registered  
7     entities that have different licensing situations,  
8     right? So we have the distribution centers are  
9     registered with the DEA as distribution centers and  
10    they have suspicious order monitoring obligations,  
11    right?

12            A.       That's correct.

13            Q.       And we have pharmacies that are  
14    registered with the DEA as pharmacy entities,  
15    correct?

16            A.       That's correct.

17            Q.       Okay. So you're not imputing the  
18    suspicious order monitoring obligations of the  
19    distributors to the pharmacies with respect to  
20    things they're purchasing, right; they didn't have  
21    to put a suspicious order monitoring system into  
22    place at the pharmacy level, correct?

23            A.       I'm placing that responsibility on  
24    the Rite Aid corporate or the compliance program of  
25    Rite Aid.

1           Q.       On what basis? What's your statutory  
2 basis for doing that? Because we have statutes  
3 that put the suspicious order monitoring obligation  
4 on the registrant, right?

5           A.       Regulations, yes, correct.

6           Q.       So then how are you then taking it to  
7 a different step? I just don't understand.

8           A.       Maintenance of effective controls to  
9 prevent diversion of controlled substances.

10          Q.       Specifically tell me what you're  
11 citing to.

12          A.       The law. I think it's 823 --  
13 21USC823 either (b) or (c), and then it's also  
14 contained in the regulations. It's CFR, I think  
15 it's 1301.01, I believe, without having --

16          Q.       And those pertain to DEA registered  
17 entities, correct?

18          A.       Yes.

19          Q.       Okay. They don't pertain to holding  
20 companies?

21          A.       Well, I think as a chain pharmacy  
22 that manages chain -- and that monitors and  
23 controls registered locations that are pharmacies,  
24 I believe that obligation also is upon Rite Aid.

25          Q.       On what basis?

1           A.       My opinion.

2           Q.       Yeah, but on what statutory code,  
3       what basis are you saying that?

4           A.       Maintenance of effective controls to  
5       prevent diversion. My reviewing of records, I see  
6       there's some coordination, even after McKesson was  
7       a registrant -- I'm sorry, even after Rite Aid was  
8       a registrant, there was some coordination with  
9       McKesson on distributions and approval of  
10      thresholds with four pharmacies with McKesson at  
11      the corporate level.

12          Q.       Excuse me, sir.

13                 MS. MCENROE: I move to strike  
14      everything after the maintenance of effective  
15      controls because there was no question pending to  
16      which you were responding.

17          Q.       (BY MS. MCENROE:) So I just am  
18      trying -- so it's just your opinion, so we should  
19      just take it as your view that there's an  
20      obligation on other corporate entities that are not  
21      DEA registrants?

22                 MS. KNIGHT: Object to the form.

23          Q.       (BY MS. MCENROE:) Because you think  
24      that they should have it; is that what you're  
25      saying?

1           A.       I believe they should under the  
2 maintenance of effective controls to prevent  
3 diversion, yes.

4           Q.       Did you enforce on anybody on that  
5 theory while you were at DEA; have you ever seen  
6 that happen?

7           A.       It's not exactly the same but very  
8 similar to the Mallinckrodt case where I held them  
9 responsible to distributions to their customer's  
10 customer.

11                   Now, I agree with you or concede that  
12 Mallinckrodt was still a registrant, but I held  
13 them to conduct where they had no direct dealings  
14 with a secondary or a customer's-customer's  
15 distribution.

16           Q.       Have you ever while you were with DEA  
17 seen a case where a registrant was held to the  
18 obligations of a registrant?

19           A.       You mean a --

20           Q.       I'm sorry. Let me try that again.

21                   While you were with DEA, did you ever  
22 see a case where a nonregistrant was held to the  
23 standards of a registrant?

24           A.       Well, if you're talking about  
25 administratively under the rule for registration,

1 the answer would be no. I'm not sure.

2 I don't directly recall one where  
3 there was any kind of an action as far as  
4 litigation against a company in the same manner  
5 that I'm proposing here. I just -- I don't know  
6 for sure.

7 Just for clarification, if I can  
8 complete my answer, is the company does have  
9 numerous registrants, they're just at the pharmacy  
10 level. They're not completely void of having any  
11 DEA registrations.

12 MS. MCENROE: Again, I move to strike  
13 as not responsive to any pending question.

14 Q. (BY MS. MCENROE:) So you recently  
15 testified in West Virginia, do you remember doing  
16 that --

17 A. I do.

18 Q. -- at a trial? And in your  
19 testimony, you testified that there's a provision  
20 in the Controlled Substances Act that relates to  
21 corresponding responsibility. Do you remember  
22 having that testimony?

23 A. I do.

24 Q. And in particular, I believe you  
25 testified that corresponding responsibility from

1 the CSA is placed on the individual pharmacist who  
2 is filling the prescription, not on the pharmacy;  
3 is that correct?

4 A. I recall giving that answer, and so  
5 when I answered that question --

6 Q. Wait. So that's a yes, then?

7 MS. KNIGHT: I need --

8 Q. (BY MS. MCENROE:) Sir, that was a  
9 yes or no question whether you remembered giving  
10 that testimony. I'm going to ask you more  
11 questions. You'll get a chance to talk about it  
12 some more.

13 MS. KNIGHT: No, ma'am. You need to  
14 let him finish his answer. You don't get to cut  
15 him off.

16 MS. MCENROE: Special Master Cohen,  
17 I'm just trying to get some yes or no questions so  
18 we can get through this and we're not here until  
19 tomorrow at the end of the day.

20 SPECIAL MASTER COHEN: He's been  
21 answering yes or no. Sometimes it comes after an  
22 explanation. But I think if you give him time,  
23 that in my having attended all of this so far, I  
24 don't think he's going outside of that line.

25 MS. MCENROE: Okay. Can we --

1 MR. FULLER: Go ahead and finish your  
2 answer, Mr. Rafalski.

3 MS. MCENROE: I don't even know what  
4 question he's responding to.

5 SPECIAL MASTER COHEN: Why don't you  
6 go ahead and start over.

7 Q. (BY MS. MCENROE:) That would be  
8 great. Let's start from the beginning. So do you  
9 remember testifying in West Virginia?

10 A. I do.

11 Q. Okay. Do you remember testifying in  
12 West Virginia, yes or no, that the CSA provision  
13 related to corresponding responsibility places that  
14 responsibility on the individual pharmacist who is  
15 filling the prescription, yes or no?

16 MS. KNIGHT: Object. Objection to  
17 form.

18 A. So first, it's not the CSA that  
19 places the obligation, it's the Code of Federal  
20 Regulations, 1306.04. And my response in that  
21 answer that I provided was just directly related to  
22 how that code of regulation applies to a  
23 pharmacist.

24 But the pharmacist is acting under  
25 the DEA registration of the pharmacy. So it's kind

1 of an encompassing act.

2 Q. (BY MS. MCENROE:) So that was a yes,  
3 right? Because my next question I think is exactly  
4 where we were going, so if you give me time, we're  
5 going to get through this together, okay?

6 So my next question was asking, and I  
7 think you had testified, that when there's an  
8 administrative action, that would be taken against  
9 the registrant regarding that corresponding  
10 responsibility having been exercised by the  
11 pharmacist, which it would be the corporate entity,  
12 the pharmacy, correct?

13 MS. KNIGHT: Objection to form.

14 A. That would be a -- that -- I don't  
15 recall specifically that's what I said but I'm not  
16 disputing what you're saying. But that would be an  
17 accurate statement, that the registrant -- the  
18 registration is held by the pharmacy and those  
19 actions that occur with the pharmacist is part of  
20 the responsibility of that registration, so, yes.

21 Q. (BY MS. MCENROE:) Thank you. And so  
22 I just want to understand, in order to have a  
23 pharmacy held responsible for the failure to have  
24 had a corresponding responsibility applied, the  
25 corresponding responsibility had to be exercised by

1 a pharmacist down below, right, so it's not just  
2 that the pharmacy has the corresponding  
3 responsibility?

4 MS. KNIGHT: Objection to form.

5 A. Well, I think the specific act is  
6 governed by the CFR. But I think the conduct of  
7 the pharmacist is part of the registration of the  
8 pharmacy. It's not an independent act, it all  
9 encompasses the pharmacy, the registration of the  
10 pharmacy.

11 Q. (BY MS. MCENROE:) So I think we may  
12 be talking in circles so I just want to make sure  
13 I'm understanding, because I think we're saying the  
14 same thing, and I'm just trying to understand.

15 The actual act of exercising  
16 corresponding responsibility in filling a  
17 prescription is done by the pharmacist, though the  
18 pharmacy may be held accountable for it if the  
19 pharmacist does not do it correctly. Is that fair  
20 to say?

21 A. I would agree with that statement,  
22 Ms. McEnroe.

23 Q. And is it fair to say then that  
24 there's not some corresponding responsibility  
25 concept that the pharmacy can exercise, absent a

1 pharmacist exercising the corresponding  
2 responsibility one way or another, whether it's  
3 sufficient or not sufficient?

4 A. Well, I think there's definitely an  
5 awareness of the responsibilities for that  
6 responsibility by the pharmacy in governing and  
7 controlling in regards to the pharmacist's acts  
8 there.

9 So I don't know -- I don't think it's  
10 just totally independent of the pharmacy, but I  
11 just think it's enacted within at least the CFR has  
12 described specifically about a pharmacist.

13 Q. So we agree that the CFR is talking  
14 specifically about a pharmacist operating and  
15 exercising its corresponding responsibility, that  
16 we agree on?

17 A. Yes, under the authority of the DEA  
18 registration of the pharmacy, yes.

19 Q. So going back to something we were  
20 talking about a minute ago, you agree that Rite Aid  
21 ceased distribution from its distribution centers  
22 all together in 2014 at some point?

23 A. I do.

24 Q. Okay. A couple of other questions,  
25 just nuts and bolts about some of the Rite Aid

1 entities and pharmacies you talked about in your  
2 report. Do you know where Rite Aid Store 3151 is  
3 located, like physically located?

4 A. No. I do not.

5 Q. Do you know if it's in Lake and  
6 Trumbull Counties?

7 A. I have a list -- not in front of me,  
8 but somewhere here I have a list and I can tell  
9 you, based on the list, it's I think out of 9 H of  
10 Mr. McCann's report, but I don't have those  
11 committed to memory, no.

12 Q. So you talk about 3151 in your  
13 report, but you don't know sitting here today where  
14 it's located?

15 A. I know it's in one of the counties,  
16 but specifically the address or where it is, no, I  
17 do not.

18 Q. When you say you know it's in one of  
19 the counties, which counties are you referring to?

20 A. I'm not sure unless I went back and  
21 looked at that part of Mr. McCann's report.

22 Q. What I'm just asking is do you know  
23 if it's in one of the plaintiffs' counties in this  
24 case?

25 MS. KNIGHT: Asked and answered.

1       Objection.

2               Q.       (BY MS. MCENROE:) I'm not fully  
3       understanding. I know it's located in a county,  
4       which could be anywhere, right, so I'm just trying  
5       to understand if it's in a plaintiff county.

6               A.       I believe it's in one of the two  
7       counties.

8               Q.       What about for Store 3182, same  
9       question, is that located in one of the plaintiff  
10      counties?

11              A.       I'm not sure about 3182 without  
12      consulting that chart.

13              Q.       And I should have said was it located  
14      because I don't want to mislead you. It closed a  
15      couple of years ago but I just wanted -- that's one  
16      that you talked about in your report as well.

17                      So you don't remember specifically  
18      whether it's in a plaintiff county or not or was in  
19      a plaintiff county or not?

20              A.       Specifically, no, I do not have that  
21      memorized.

22              Q.       Okay. So in your report you talk a  
23      bit about Rite Aid having a five thousand dosage  
24      unit threshold. Is that a concept that you  
25      remember?

1           A.       Yes, by NDC, yes, ma'am.

2           Q.       By NDC, yeah. And you specifically  
3 testified previously, but tell me if I'm wrong,  
4 that DEA does not prescribe instructions to  
5 distributors about how to construct a suspicious  
6 order monitoring system; is that fair to say?

7           A.       Could you repeat that one more time,  
8 I'm sorry?

9           Q.       Sure. I'm not trying to do anything  
10 tricky here. So I think you've testified, probably  
11 a number of times, now that DEA does not give  
12 instructions or rules to the specific distributors  
13 about how to design an effective suspicious order  
14 monitoring program; is that fair to say?

15                   MS. KNIGHT: Object to form.

16           A.       That's a correct statement as far as  
17 what I was directed as when I was a diversion  
18 investigator.

19           Q.       (BY MS. MCENROE:) So there's not  
20 like a list somewhere of a set of characteristics  
21 of a suspicious order monitoring system that are  
22 good or not good or sufficient or not sufficient in  
23 and of themselves; is that fair to say?

24           A.       Well, I think there's information  
25 available on the internet, but if you're speaking

1 about does the DEA give a list to a registrant,  
2 because that was kind of a general question, the  
3 DEA does not, but I think there's plenty of  
4 resources available outside of the DEA.

5 Q. Sure. You answered a better question  
6 than I asked. So my question is does the DEA  
7 provide a list or a set of criteria, specifically  
8 about nuts and bolts how to construct the  
9 suspicious order monitoring program that is  
10 sufficient from your view?

11 MS. KNIGHT: Asked and answered.

12 A. They do not.

13 Q. (BY MS. MCENROE:) You discuss in  
14 your report, we can take a look at it, Page 113.

15 A. Okay.

16 Q. There's a paragraph towards the top  
17 that starts "If a Rite Aid store," do you see that?

18 A. Yes.

19 Q. Okay. It says, "If a Rite Aid store  
20 wanted more than the five thousand DUs allowed by  
21 the company-wide threshold, the store could request  
22 a permanent exception or override." Do you see  
23 that?

24 A. I do.

25 Q. Where did you get the concept

1 permanent there for this report, do you know?

2 There's no citation on that sentence.

3 A. I'm sorry I didn't cite one. I  
4 believe it's something I reviewed in some of the  
5 records.

6 Q. Do you have any recall that Rite Aid  
7 periodically reviewed its exceptions to the five  
8 thousand NDC threshold?

9 A. Not that specifically, but what -- I  
10 did not recall -- or I did not see is when you are  
11 granting these exceptions and overrides, I didn't  
12 see any due diligence conducted or sufficient due  
13 diligence conducted. But I don't specifically  
14 remember that.

15 Q. So you said two things there. You  
16 said we didn't do any due diligence, and then you  
17 said we didn't do sufficient due diligence. I just  
18 wanted to be clear. Which are you saying?

19 A. I would say sufficient because there  
20 could be one out there that maybe I didn't see or I  
21 missed, so I don't want to be so definitive, but I  
22 didn't see a sufficient number.

23 Q. Did you look for materials like that?

24 A. I did.

25 Q. Did you look for materials like that

1 for threshold exceptions in Lake or Trumbull  
2 Counties in particular?

3 A. Yes, I did.

4 Q. Did you have any understanding of  
5 whether there were any exceptions to the five  
6 thousand threshold in Lake and Trumbull County --  
7 Lake or Trumbull County?

8 A. I believe I saw some emails that  
9 indicated that there could be. I don't remember  
10 specifically of seeing any list or override list,  
11 at least right now that I can recall.

12 Q. So would you agree with me that if  
13 there were no exceptions to the five thousand  
14 dosage unit threshold for the stores in Lake and  
15 Trumbull County, that there would be no due  
16 diligence about the threshold exceptions in Lake or  
17 Trumbull County that did not exist?

18 A. If -- that would be an accurate  
19 statement, yes.

20 Q. Let's take a look in the first of the  
21 Morgan Lewis binders that I sent you. I apologize  
22 I'm going to have to stand up and get my binders  
23 from the back. I'm in my makeshift office here.

24 MS. KNIGHT: What binder?

25 MS. MCENROE: So we're going to look

1 at Binder Number 1 of 4, and in particular Tab 8.

2 (RITE Exhibit 1 was marked for  
3 identification.)

4 A. Hold up. We're digging them out.

5 MS. KNIGHT: They're wrapped within  
6 the box.

7 MS. MCENROE: Oh, thanks.

8 MS. KNIGHT: One binder that's  
9 Volumes 1 through 4. Is that right?

10 MS. MCENROE: Yeah, whoever labeled  
11 them, I apologize, they wrote 1 through 4, 2  
12 through 4, 3 through 4, so it's the first number  
13 that's governing.

14 MS. KNIGHT: This one popped open in  
15 travel so we'll put it back together again and  
16 he'll have it in just a moment.

17 MS. MCENROE: Thank you.

18 THE WITNESS: I might put it on the  
19 other side.

20 MS. KNIGHT: Yeah.

21 THE WITNESS: It's probably too big.  
22 That's why.

23 MS. KNIGHT: Yeah, too much in here.

24 THE REPORTER: Ms. McEnroe, if you  
25 could slow down a bit, I would appreciate it.

1 (Off-the-record discussion.)

2 A. Okay. I'm there.

3 Q. (BY MS. MCENROE:) Great. Thank you.  
4 You'll see this is an email from Kevin Mitchell.  
5 Do you see that?

6 A. I do.

7 Q. And he was the senior manager of  
8 regulatory compliance for Rite Aid, and that's  
9 dated in 2008; do you see that?

10 A. I do.

11 Q. And the subject is information  
12 needed?

13 A. I see that.

14 Q. And they're talking about having a  
15 process in place for excessive order monitoring and  
16 talking about quantities, and you'll see if you do  
17 the quick math that those bottles that they have  
18 listed, those add up to five thousand. Do you see  
19 that?

20 A. I do.

21 Q. And then he says, "Please identify  
22 any and all stores that have attempted to order in  
23 excess of these quantities. I need the store  
24 number, item number and description, and date of  
25 order. We are going to run reports for those

1 stores on those items in question to check for  
2 'need'." Do you see that?

3 A. I do.

4 Q. And then it goes on, "Also, some of  
5 you have stores that have been given exceptions for  
6 certain items. Please provide the store number and  
7 item number as well. We want to reevaluate the  
8 need." Do you see that?

9 A. I do.

10 Q. And then the last part I'm going to  
11 read is, "We will be reevaluating our current  
12 threshold. Once we run the reports and review, we  
13 will send to your D.C. printer for you to file with  
14 your controlled drug paperwork." Do you see that?

15 A. I do.

16 Q. And I looked but I didn't see this  
17 email on your materials considered. Have you seen  
18 this email before?

19 A. I don't specifically recall it.

20 Q. If you had seen it before, would it  
21 have been in your materials considered list?

22 A. It should be. I can check my  
23 materials.

24 Q. We're a little short on time so I'll  
25 represent to you, and I'm comfortable that if you

1 look later you'll see, I didn't see it listed  
2 there. Are you confident that you were given all  
3 of the documentation relevant to Rite Aid  
4 suspicious order monitoring system?

5 A. I believe I am.

6 Q. Okay. So you in your report wrote  
7 that there was a permanent exception, and then here  
8 we have Mr. Mitchell, the senior manager of  
9 regulatory compliance for Rite Aid, sort of the  
10 headquarters Rite Aid, talking about reevaluating  
11 our current threshold and wanting to reevaluate the  
12 need for specific exceptions to the five thousand  
13 threshold. Do you see that?

14 A. I do. And this email would indicate  
15 to me that they were permanent exceptions that  
16 they're reevaluating to make sure they stay.

17 And as I had talked about earlier, is  
18 these were some exceptions that were put into  
19 place, and when I was looking through documents, I  
20 didn't see these exceptions, any due diligence or  
21 any verification that those would be for proper  
22 amounts that didn't have the potential for  
23 diversion.

24 Q. So I just want to understand what you  
25 think permanent means, because if they're

1 reevaluating it, and they reevaluate it and they  
2 decide they don't need it anymore, that would not  
3 be permanent; is that fair to say?

4 A. Well, I think that's kind of your  
5 interpretation of permanent. If temporary would  
6 mean we'll approve it at one time and then it will  
7 revert back or there would be some short duration.

8 Here we're querying throughout the  
9 pharmacies to find the ones where there had been an  
10 exception granted and then getting back.

11 So the other concerning thing is that  
12 it appears maybe Mr. Mitchell doesn't even know  
13 which exceptions have been approved.

14 MS. MCENROE: I'm going to move to  
15 strike starting with the other, because that was  
16 not responsive to any question; that was just a  
17 declaratory statement.

18 Q. (BY MS. MCENROE:) Okay. So we maybe  
19 have a disagreement on what the word permanent  
20 means. So I just want to understand also, if you  
21 look back at your report at Page 113, a little  
22 further down in that paragraph, it starts with the  
23 word "There is no formal." Do you see that? It  
24 says, "There is no formal documentation of a  
25 request to increase or override the threshold." Do

1     you see that?

2             A.       I do.

3             Q.       And what do you -- what do you mean  
4     by formal documentation in that instance?

5             A.       Something in writing, something that  
6     can be documented that can be reviewed. Something  
7     more than a telephone call.

8             Q.       Would an email suffice?

9             A.       If it was placed in a due diligence  
10    file where it could be retrieved or reviewed, I  
11    would say yes.

12            Q.       And when you say that, where is the  
13    requirement that an email be placed in a due  
14    diligence file to be able to be reviewed?

15            A.       Well, I think if a registrant wants  
16    to consider it as part of their due diligence, they  
17    would put it in a customer file. So if you were to  
18    review the customer file and due diligence, you  
19    would see it existed. To just have it maintained  
20    somewhere on a server --

21            Q.       So that's an interesting question.  
22    So when you were an investigator and you would go  
23    in and do an investigation, if you asked, what's  
24    the deal with this particular threshold, it was a  
25    problem if the company had to go back and just

1 print off an email from their email server as  
2 opposed to saying, here, I have it in this folder?  
3 That to you would not suffice, it was as if that  
4 documentation didn't exist?

5 MS. KNIGHT: Objection to the form.

6 A. I wouldn't look for an email specific  
7 to an order. I would ask first to see the customer  
8 file to see if it existed in there.

9 And how I view that scenario that you  
10 describe is if you're in a well-run compliance  
11 program and you were going to do a review of a Rite  
12 Aid pharmacy, you would not want to have to go  
13 gather emails out of servers, you would want all  
14 those records brought together in a customer file  
15 for that customer.

16 Q. (BY MS. MCENROE:) Sure, ideally.  
17 But if the company brought them to you but they  
18 weren't just in a specific folder called customer  
19 file, you would still consider it as part of the  
20 investigation if they gave it to you and presented  
21 it to you, correct?

22 A. I may consider they did the  
23 investigation, but the fact that it wasn't part of  
24 the customer file would be a concern, because I'm  
25 not sure a person that would look at the customer

1 file would go and search all these other entities  
2 to try to find any records related to due  
3 diligence.

4 Q. Does the DEA define what needs to be  
5 maintained in the customer file? Is that something  
6 I can go look up in a code somewhere?

7 A. You cannot.

8 Q. In your report, you talk about  
9 certain enforcement actions against Rite Aid,  
10 against other entities and whatnot. Do you  
11 remember having that in your report?

12 A. They are, enforcement actions are  
13 here, yes, ma'am.

14 Q. Did you do any research to see if  
15 there was a factual nexus between the alleged  
16 conduct in the enforcement actions that you listed  
17 and the allegations against the defendants in this  
18 case?

19 A. I'm not sure I understand that  
20 question.

21 Q. So let me ask it a little  
22 differently. Did you go through and check that  
23 each of the enforcement actions you listed, for  
24 example, pertained to actual stores in the  
25 jurisdictions in this case?

1           A.       Well, I hope they did. I hope the  
2       DEA didn't take action against a store that didn't  
3       exist.

4           Q.       I'm sorry. In this case, in terms of  
5       in the plaintiff counties.

6           A.       Oh, I didn't understand your  
7       question. Are you --

8           Q.       Yeah, I don't think they're  
9       make-believe stores, I think we can agree on that.

10                   So let me start over and see if we  
11       can speak the same language. So my question is:  
12       Did you do any research to see if there was a nexus  
13       between the alleged conduct and the enforcement  
14       actions that are listed in your report and the  
15       opinions that you've advanced about the defendants  
16       in these counties?

17           A.       So in looking at them, I did review  
18       them, but it wasn't important to me whether they  
19       were specifically in Lake or Trumbull County,  
20       because my opinions are systemic and it's corporate  
21       wide.

22                   So it's just an indication of  
23       failures to be in compliance with DEA regulations  
24       that was the importance of putting those actions in  
25       my report.

1           Q.       Did you do any research to see if the  
2 substances at issue in this alleged conduct  
3 pertained to opioids?

4           A.       I recall reading them, some did and  
5 some didn't, but again, it was in regards to just  
6 compliance with DEA regulations, conduct by  
7 company.

8           Q.       Just overall compliance is what  
9 you're saying, not specific about opioid-related  
10 suspicious order monitoring or the like; is that  
11 fair to say?

12          A.       I would agree with that statement,  
13 Ms. McEnroe.

14          Q.       Okay. And in fact, did you even  
15 check whether the enforcement actions you have  
16 listed are about distribution conduct?

17                   MS. KNIGHT: Objection to form.

18          A.       I remember reviewing them, and off  
19 the top of my head, I don't. I can review them  
20 again, but I believe there probably some aren't  
21 specific just to distributors.

22          Q.       (BY MS. MCENROE:) And we spoke a  
23 little bit earlier -- I'm sorry. I didn't mean to  
24 cut you off.

25          A.       I'm sure that it's in regards to

1 registrants. There's -- it's -- all of these  
2 administrative actions are in regards to DEA  
3 registrants and DEA regulations. Maybe not all  
4 specific to distributors.

5 Q. Okay.

6 MS. KNIGHT: If you could slow down a  
7 little bit, maybe you wouldn't keep cutting  
8 Mr. Rafalski off.

9 MS. MCENROE: I appreciate the tips  
10 on my deposition style, thank you.

11 Q. (BY MS. MCENROE:) So in terms of the  
12 actual enforcement actions you have listed here,  
13 some of them come years and years after we even  
14 stopped -- Rite Aid even stopped distributing; does  
15 that sound right to you? Do you have any recall on  
16 that?

17 A. Not specifically. If you want to  
18 point --

19 Q. Yeah, so let's take a look -- let me  
20 get my binders straightened out here. So give me  
21 one second.

22 At Page 113 you'll see there's a  
23 section that starts "Enforcement Actions" as a  
24 header, right, do you see that?

25 A. My report?

1 Q. Yes, please.

2 A. Okay. Sorry. I'm there.

3 Q. Yes. So there's a section that  
4 starts "Enforcement Actions," but I'm going to  
5 direct you to Page 114, so on the next go.

6 A. Okay.

7 Q. And you'll see starting towards the  
8 top, each of the paragraphs starts with the date,  
9 right, March 2017, January 2018, December 2018. Do  
10 you see that?

11 A. I do.

12 Q. And we discussed earlier that Rite  
13 Aid stopped distributing sometime in 2014; is that  
14 correct?

15 A. It is.

16 Q. So that's what I was asking about,  
17 about that -- the times just don't connect; is that  
18 fair to say?

19 MS. KNIGHT: Objection to form.

20 A. Well, it goes back to the corporate  
21 entity of Rite Aid and whether or not they are in  
22 compliance with regulations of the DEA.

23 Q. (BY MS. MCENROE:) Right. But my  
24 question is whether or not the ones you listed here  
25 were specific about distribution conduct. And Rite

1 Aid as a corporate entity was not doing any  
2 distribution for years by that time; is that fair  
3 to say?

4 A. Well, yes. I didn't understand the  
5 question. I just thought you asked why I would  
6 post administrative actions not specific to  
7 distributors.

8 Q. Let's take a look at another one of  
9 our binders. And it's going to be the one that  
10 says Volume 2 to 4.

11 A. We probably should unwrap them all.

12 Q. (BY MS. MCENROE:) It's like  
13 Christmas morning there, getting them out of the  
14 bubble wrap. I apologize.

15 A. We like the bubble wrap.

16 MS. KNIGHT: That one is going to pop  
17 open too.

18 A. 2 to 4.

19 Q. (BY MS. MCENROE:) Great. I'm sorry?  
20 What did you say, sir?

21 A. What tab?

22 Q. Perfect. No problem. I just wanted  
23 to get the binder first to start.

24 So multiple times in your report,  
25 Mr. Rafalski, you discuss that Rite Aid reported

1 zero suspicious orders to the DEA. Do you remember  
2 that?

3 A. I do.

4 Q. So in particular, for example, just  
5 to get a good visual, if you look at Page 123 --  
6 I'm sorry. That's the wrong page. 115 I meant,  
7 I'm so sorry.

8 A. Okay.

9 Q. You have a section there, Section 4,  
10 and it says "Suspicious Orders Reported in CT3  
11 Jurisdictions," and you have the years 2006 to 2014  
12 listed with zeros next to them; is that correct?

13 A. That's correct.

14 Q. So let's take a look at Tab 35.  
15 (RITE Exhibit 2 was marked for  
16 identification.)

17 Q. (BY MS. MCENROE:) And the next  
18 number of documents I'm going to show you,  
19 Mr. Rafalski, are all very similar to one another.  
20 And I'll give you time to look at them. They're  
21 short, so they're easy to take a look at.

22 They're each an email from Kimberly  
23 Birklin, who is the DEA coordinator at Liverpool,  
24 which is one of the two distributions centers we  
25 were talking about being Rite Aid distribution

1 centers, to Heather White at the DEA. Do you see  
2 that for Tab 35?

3 A. I do.

4 Q. Okay. And it says, "Heather, we did  
5 not have any suspicious orders at our Liverpool  
6 distribution center during November 2009." Do you  
7 see that?

8 A. I do.

9 Q. So now we're going to go to Tab 36.  
10 (RITE Exhibit 3 was marked for  
11 identification.)

12 Q. (BY MS. MCENROE:) Very similar  
13 email. This is one is about December 2009. Do you  
14 see that?

15 A. I do.

16 Q. We'll go to Tab 37.  
17 (RITE Exhibit 4 was marked for  
18 identification.)

19 Q. (BY MS. MCENROE:) Very similar email  
20 but this time it's just January 2010, that's the  
21 difference. Do you see that?

22 A. I do.

23 Q. The next Tab 38 is the same but for  
24 February 2010. Do you see that?

25 (RITE Exhibit 5 was marked for

1 identification.)

2 A. I do.

3 Q. (BY MS. MCENROE:) The next Tab 39 is  
4 for March 2010?

5 (RITE Exhibit 6 was marked for  
6 identification.)

7 Q. (BY MS. MCENROE:) Do you see that?

8 A. I do.

9 Q. Okay. The one after that, Tab 40, is  
10 April 2010. Do you see that?

11 (RITE Exhibit 7 was marked for  
12 identification.)

13 A. I do.

14 (RITE Exhibit 8 was marked for  
15 identification.)

16 Q. (BY MS. MCENROE:) Okay. Great. And  
17 then Rite Aid 41 is May 2010, do you see that?

18 A. I do.

19 (RITE Exhibit 9 was marked for  
20 identification.)

21 Q. (BY MS. MCENROE:) Okay. Then Tab 42  
22 is June 2010, do you see that?

23 A. I do.

24 (RITE Exhibit 10 was marked for  
25 identification.)

1 Q. (BY MS. MCENROE:) July 2010 is at  
2 Tab 43; do you see that?

3 A. I do.

4 (RITE Exhibit 11 was marked for  
5 identification.)

6 Q. (BY MS. MCENROE:) Tab 44 is at  
7 August 2010, do you see that?

8 A. I do.

9 (RITE Exhibit 12 was marked for  
10 identification.)

11 Q. (BY MS. MCENROE:) Tab 45 is  
12 September 2010, do you see that?

13 A. I do.

14 (RITE Exhibit 13 was marked for  
15 identification.)

16 Q. (BY MS. MCENROE:) Okay. Now we're  
17 going to go to the other binder that you just had  
18 opened. I apologize for having to jump between  
19 binders, and we're going to go to Tab Number 7.

20 THE WITNESS: Just put it on top.

21 MS. KNIGHT: All right.

22 MS. MCENROE: Yeah, that sounds good.

23 MS. KNIGHT: Well, now I have three  
24 binders in front of me.

25 THE WITNESS: I know.

1 MS. MCENROE: You should see what my  
2 office looks like. I hear you.

3 A. Number 7.

4 Q. (BY MS. MCENROE:) Yes, sir. So  
5 Number 7, you'll see this is an email, so we're  
6 going to read it from the back to start, if that  
7 makes sense, at the bottom of the email chain. And  
8 you'll see this is a November 2010 email from  
9 Kimberly Birklin to Heather White.

10 MS. KNIGHT: Just a second. If  
11 you'll just give him a moment so he can read the  
12 email.

13 MS. MCENROE: Absolutely. I was just  
14 going to direct him through it, but that's no  
15 problem.

16 A. So if we're going from the bottom up,  
17 we're going on the back page?

18 Q. (BY MS. MCENROE:) Yes, sir, exactly.  
19 So we're going to go to the back page, and you'll  
20 see that Kim Birklin is saying, "Heather, we did  
21 not have any suspicious orders for the month of  
22 October 2010," do you see that?

23 MS. KNIGHT: Elisa, please let him  
24 read the email. He'll be right with you.

25 MS. MCENROE: Sure. I was going to

1 walk him through it. It's no problem.

2 (Pause.)

3 A. Okay. Go ahead. I'm sorry.

4 Q. (BY MS. MCENROE:) Great. So that  
5 first email we were at the back page of Tab 7 says,  
6 "Heather, we did not have any suspicious orders for  
7 the month of October 2010 at our Liverpool Rite Aid  
8 distribution center," do you see that?

9 A. I do.

10 Q. And that matches the slew of  
11 documents we just looked at from the preceding  
12 months; is that fair to say?

13 A. I would agree with that.

14 Q. And then Ms. White writes back, and  
15 you'll see here she has her signature block so we  
16 can see she's out of the Albany district office, do  
17 you see that?

18 A. I do.

19 Q. And she responds, "You don't have to  
20 send these anymore, but you do still have to  
21 maintain the suspicious order monitoring program  
22 and notify me if you do have any issues." Do you  
23 see that?

24 A. I do.

25 Q. Okay. And I looked but I didn't see

1 any of these documents in your materials  
2 considered. Have you seen these documents before?

3 A. I do not believe I have.

4 Q. Okay. So looking through your  
5 report, Mr. Rafalski, I didn't see any discussion  
6 of letters of admonition against Rite Aid relating  
7 to its suspicious order monitoring program. Does  
8 that sound right to you?

9 A. I did not review any records that  
10 indicate that there were any issue.

11 Q. And similarly, I didn't see any  
12 discussion in your report of any enforcement  
13 actions against Rite Aid relating to its suspicious  
14 order monitoring program; does that sound right to  
15 you?

16 A. I don't recall putting that opinion  
17 in or that information in my report, so I think  
18 that would be an accurate statement.

19 Q. Thank you. And, in fact, I didn't  
20 see any discussion in the report of any negative  
21 feedback whatsoever from the DEA to Rite Aid about  
22 its suspicious order monitoring program. Do you  
23 remember seeing any of that?

24 MS. KNIGHT: You can look at your  
25 report if you need to.

1           A.       One second.

2           Q.       (BY MS. MCENROE:)   Sure.

3                   MS. KNIGHT:   The enforcement action  
4       sections starts on Page 113.

5           Q.       (BY MS. MCENROE:)   Right.   So the  
6       suspicious order monitoring program, that's what  
7       I'm specifically asking about.

8           A.       I don't believe I do, Ms. McEnroe.

9           Q.       (BY MS. MCENROE:)   I also frankly  
10       don't see any discussion about positive feedback  
11       from the DEA about Rite Aid's suspicious order  
12       monitoring program as well.   Does that sound right  
13       to you?

14          A.       I believe that's a correct statement.

15          Q.       Okay.   Did you ask for correspondence  
16       reflecting any feedback DEA provided to Rite Aid  
17       about its suspicious order monitoring program while  
18       you were preparing your report?

19          A.       I searched and I asked for assistance  
20       in searching anything related to a suspicious order  
21       monitoring program.

22          Q.       Okay.   Whether good or bad?

23          A.       Yeah.   It doesn't look at the  
24       content, just I think searches documents for  
25       certain topics, if it appears in the correct area

1 to -- when the search is generated.

2 For example, all of the emails that  
3 we just discussed regards to no suspicious order  
4 monitoring, I'm slightly confused because I  
5 guess -- I don't know if those documents were  
6 produced in discovery. I don't recall seeing them.  
7 That's why I say that.

8 Q. Okay. So if we take a look back --  
9 now I've messed up my binder, so give me one  
10 second -- to the documents we were looking at. So  
11 let's go, for example, to Tab 36.

12 I just picked one of the random ones. I  
13 picked December 2010, do you see that?

14 A. Yes.

15 Q. And down at the bottom there's a  
16 trailer that was printed on the bottom that says  
17 "Confidential Subject to Protective Order," do you  
18 see that?

19 A. Yes.

20 Q. Then in right-hand bottom corner it  
21 says RiteAid\_OMDL, that stands for opioids MDL, and  
22 then there's a Bates stamp. Do you see that?

23 A. Yes.

24 Q. Do you have any reason to believe  
25 that wasn't produced in discovery?

1 MS. KNIGHT: Object to form.

2 A. I should have been more specific. In  
3 regards to the suspicious order monitoring  
4 interrogatories or the discovery material, whether  
5 these were listed specific to that area, I should  
6 have been more definitive on my answer.

7 Q. (BY MS. MCENROE:) Oh, so you're not  
8 saying that they weren't produced in discovery, you  
9 mean that they weren't specifically highlighted  
10 necessarily in the discovery materials that you  
11 looked at?

12 A. In regards to suspicious orders  
13 reporting. It asked for all suspicious orders  
14 reporting. I don't know if you would -- this would  
15 be included because it says reporting none, but it  
16 would be -- it would be responsive, I believe, to  
17 some of the discovery requests.

18 Q. Okay. But plaintiffs didn't show it  
19 to you in any event?

20 A. I don't recall seeing this.

21 Q. I would like to direct your attention  
22 to Tab 5, which is in Binder 1.

23 (RITE Exhibit 14 was marked for  
24 identification.)

25 Q. (BY MS. MCENROE:) And I'll give you

1 a minute to take a look at it if that would be  
2 helpful.

3 MS. KNIGHT: Right here. Yes. If he  
4 could have just a minute.

5 MS. MCENROE: Of course. It's both  
6 an email and an attachment, just to explain sort of  
7 the sequence of the documents there.

8 MS. KNIGHT: Thank you.

9 A. Okay. I'm ready.

10 Q. (BY MS. MCENROE:) Great. The cover  
11 email you'll see is from Keith Frost. And the  
12 subject line is "Please review quote DEA audit July  
13 11th."

14 Do you see that?

15 A. I do.

16 Q. And this document is dated July 11th,  
17 2012, do you see that?

18 A. I do.

19 Q. So this was pretty contemporaneous  
20 with the circumstances that he's talking about; is  
21 that fair to say?

22 MS. KNIGHT: Objection to form.

23 A. It is.

24 Q. (BY MS. MCENROE:) And it says,  
25 "Great job everyone for making this audit very

1 successful. Please share with our associates.

2 Keith." Do you see that?

3 A. I do.

4 Q. Do you have an understanding that the  
5 personnel listed here, they work at the Perryman  
6 distribution center, or at least they did at the  
7 time, do you have any recall one way or the other  
8 on that, for example Deborah Chase and Marion Wood,  
9 both of whom I think were deposed in this matter?

10 A. I don't have any specific  
11 recollection of them.

12 Q. Sure. Well, let's look at the -- the  
13 next page is the first page of the attachment. And  
14 it starts with Roman Numeral I, D.C. 10, DEA audit  
15 results: No findings or discrepancies. One  
16 hundred percent accountability. Do you see that?

17 A. I do.

18 Q. What -- Rite Aid sometimes internally  
19 refers to the Perryman distribution center as D.C.  
20 10. Is that something you've seen in some  
21 documentation? Is that familiar to you?

22 A. I recall seeing it, but I'm not sure  
23 that I equated it when I read it to the Perryman,  
24 but I don't disagree with you or say that I don't  
25 accept that.

1           Q.       Sure. So we don't have to go through  
2 the entire content, I know you just got a chance to  
3 take a look at it. But there's then Section 2 is a  
4 summary of the audit. Do you see that?

5           A.       I do.

6           Q.       And then there's a Section 3 there at  
7 the bottom of that page, and it says, "Shout out.  
8 Both DEA inspectors are very impressed and pleased  
9 to see that Rite Aid demonstrates its due diligence  
10 by having an excellent excessive order monitoring  
11 program. They mentioned that the DEA is taking a  
12 harder look at all distributors to ensure that  
13 monitoring" -- "that order monitoring processes are  
14 in place and effective." Do you see that?

15          A.       I do.

16          Q.       I looked. I couldn't find this  
17 document in your materials considered either. Have  
18 you seen this before?

19          A.       I'm not sure. I look at so many  
20 documents. I don't specifically recall it.

21          Q.       You certainly didn't cite it in your  
22 report; is that fair to say?

23          A.       I don't believe I did, but let me  
24 check something.

25          Q.       And, Mr. Rafalski, since I'm far away

1 from where you are, may I ask what you're taking a  
2 look at just so I can follow along?

3 A. My report.

4 Q. The actual body of the report or the  
5 list of materials considered?

6 A. List of materials considered.

7 Q. Okay.

8 (Off-the-record discussion.)

9 Q. (BY MS. MCENROE:) Yeah. I think if  
10 the Bates numbers are sorted in order, it would  
11 appear on Page 15 if I'm reading this correctly.  
12 But I don't see it there.

13 A. I don't believe I see it.

14 Q. So let's take a look at Page 121 of  
15 your report. Let me know when you're there.

16 A. I am there.

17 Q. There's a paragraph towards the  
18 bottom that starts "Rite Aid was on notice." Do  
19 you see where I am?

20 A. I do.

21 Q. It says, "Rite Aid was on notice on  
22 multiple occasions that its SOM system was  
23 insufficient and not complaint with regulatory  
24 standards." Do you see that?

25 A. I do.

1 Q. And there's no citation on that  
2 sentence, correct? It's just a yes or no, there's  
3 no footnote on that sentence?

4 A. There is no footnote ton that  
5 sentence.

6 Q. Then your paragraph continues to go  
7 on to talk about Dear Registrant letters, correct?

8 A. Yes.

9 Q. And in the footnote on the next  
10 sentence about the Dear Registrant letters, there's  
11 a citation -- let me keep going here to see, that  
12 if you keep going you quote from the Dear  
13 Registrant letters on the next page, 122, and you  
14 have a footnote to the Dear Registrant letters at  
15 Footnote 498; is that correct?

16 A. I believe so, yes.

17 Q. And that's AmerisourceBergen produced  
18 document, correct; that's not a Rite Aid produced  
19 document you cited to?

20 A. Yes.

21 Q. Did you ask for a copy of Dear  
22 Registrant letters that went to Rite Aid in  
23 particular?

24 A. I didn't ask Rite Aid. I looked  
25 through the production materials.

1           Q.       Did you see one that was produced  
2 specifically about Rite Aid or addressed  
3 specifically to Rite Aid?

4           A.       I don't recall specifically seeing  
5 one, but my experience with DEA is that every  
6 registered entity that was a distributor were  
7 mailed those registrant letters.

8           Q.       In your report, you also talk about a  
9 concept of distributor briefings, correct?

10          A.       Yes.

11          Q.       And I looked, and you have a list of  
12 distributor briefings I saw on Page 18, for  
13 example. I didn't see any reference to any Rite  
14 Aid distributor briefings. Have you seen any  
15 evidence of any Rite Aid distributor briefings as  
16 you described them in your report?

17          A.       Not in the discovery material, not  
18 that I can recall.

19          Q.       So you haven't seen that Rite Aid got  
20 the Dear Registrant letters specifically or that  
21 there was a distributor briefing for Rite Aid,  
22 correct?

23          A.       I don't recall.

24          Q.       Okay.

25          A.       I'm trying to have some recollection

1 of Ms. Hart's deposition and whether she responded  
2 to that, but if it's not in my report, I don't have  
3 time to reread and look at my notes on Hart.

4 Q. But sitting here today, you don't  
5 remember that, correct?

6 A. I don't have any recollection sitting  
7 here right now, that's correct.

8 Q. Okay. And if it were anywhere, you  
9 think it would be in Janet Hart's deposition. Is  
10 that fair to say?

11 A. At least a question or a response to  
12 whether or not those things -- the company had  
13 received those, if she had knowledge of it or a  
14 distributor briefing.

15 For sure the letters from Rannazzisi  
16 because they consistently get asked in the  
17 depositions of the 30(b)s. I just don't have any  
18 direct recollection of Ms. Hart.

19 Q. So you don't have a direct  
20 recollection of either the Dear Registrant letter  
21 or the distributor initiative briefings, you're  
22 just thinking where you might go to look; is that  
23 fair to say?

24 MS. KNIGHT: Object to form.

25 A. That's where I would look first,

1       that's correct. I don't have a direct recollection  
2       that she answered those specific questions.

3               Q.       Okay. I think now is a good time for  
4       us to go off the record.

5                       THE VIDEOGRAPHER: This ends Media  
6       Unit Number 1 in the deposition of James Rafalski.  
7       The time is 2:51 p.m. We are going off the record.

8                       (Whereupon, a break was had from 2:51  
9       p.m. EDT until 3:09 p.m.)

10                      THE VIDEOGRAPHER: This begins Media  
11       Unit Number 2 in the deposition of James Rafalski.  
12       The time is 3:09 p.m. We are back on the record.

13

14       EXAMINATION BY MS. FUMERTON:

15               Q.       Good afternoon, Mr. Rafalski. I  
16       introduced myself at the beginning of the  
17       deposition to you when we were off the record, but  
18       just as a reminder, my name is Tara Fumerton, and I  
19       represent Walmart in this litigation.

20                      I am going to ask you a series of  
21       questions. It might seem that it is a little  
22       scatter shot, but it's just the nature of going at  
23       the end of the day or towards the end of the day  
24       and I'm trying not to repeat myself. So I will try  
25       to orient you as to what topics my questions are as

1 we go through this process.

2 A. I understand.

3 Q. My first -- my first question for you  
4 is do you have any notes with you today?

5 A. I do have a sheet of notes.

6 Q. And how many sheets of notes -- could  
7 you hold it up for the camera for me? Is that  
8 something that is doable?

9 A. (Demonstrating).

10 Q. Okay. And is that --

11 MS. FUMERTON: I would like to mark  
12 that as an exhibit. I know we can't do that sort  
13 of on the fly in the remote process. So what I  
14 would ask is that we mark that as Walmart Exhibit  
15 1.

16 (Walmart Exhibit 1 was marked for  
17 identification.)

18 A. Want me to write it on it?

19 Q. No. You don't have to write it on  
20 it. We will just ask your counsel or ask Ms.  
21 Knight to make a PDF of that and send it to the  
22 court reporter during a break, if we can do that.

23 A. Sure.

24 Q. Could you explain to us what that  
25 series of notes is? Is it something that you

1 created, for example?

2 A. Yes. It is kind of like cliff notes.  
3 Just some points in regards to Walmart that I put  
4 down.

5 Q. Oh, so it is specific to Walmart; is  
6 that what I am hearing?

7 A. It is.

8 Q. Okay. Then I definitely am going to  
9 want this marked during the break and then I might  
10 have some questions for you about that document.

11 Besides that -- you said it is one  
12 page, is that right?

13 A. That's correct.

14 Q. And you wrote those notes yourself?

15 A. I did.

16 Q. Did anybody else give you input on  
17 those notes?

18 A. They did not.

19 Q. And why did you choose to create  
20 notes specific to Walmart?

21 A. Well, no one has asked. I have notes  
22 one page specific to every entity -- every  
23 defendant just to help jog my memory since there's  
24 five and I didn't want to cross over and have some  
25 confusion between different SOMS or some of the

1 information regarding each of the defendants.

2 Q. So I guess I may not have asked a  
3 clear enough question earlier.

4 So you have -- in addition to the one  
5 page of notes for Walmart, you have four other  
6 one-page notes; is that accurate?

7 A. It is.

8 Q. Okay. Actually, we are going to mark  
9 that entire set of notes, so I want all of them  
10 together as Walmart Exhibit 1.

11 A. Okay.

12 Q. So that would be five pages worth of  
13 notes; is that right?

14 A. That is correct.

15 Q. Okay. Do you have any other notes  
16 with you today?

17 A. I do not.

18 Q. Ms. Swift asked you a series of  
19 questions about your conversation with Craig  
20 McCann. Do you recall those questions?

21 A. I do.

22 Q. Have you talked to any of plaintiffs'  
23 other paid experts in connection with your  
24 testimony or your expert report for the Track 3  
25 case?

1 A. I have not.

2 Q. Did you speak with Carmen Catizone?

3 A. I have not.

4 Q. Do you have your expert report in  
5 front of you? I think it was marked as Giant Eagle  
6 Exhibit 2.

7 A. I do.

8 Q. And do you have -- that Schedule I is  
9 part of your report; is that correct?

10 A. Yes.

11 Q. Your materials? Could you turn to  
12 Page 42 of Schedule I? I just have a simple  
13 question for you.

14 A. Go ahead.

15 Q. Specifically on Page 42, one of the  
16 entries that you listed says "all discovery  
17 responses served by defendants included in my  
18 report."

19 A. Hold on.

20 Q. Do you see that about halfway  
21 through?

22 A. I'm sorry. When you said 42, I  
23 thought you meant Page 42. I'm sorry.

24 Q. Yeah, it should be Page 42 of  
25 Schedule I, I believe. We also have it on the

1 screen if you don't want to flip, but take your  
2 time if you want to have the hard copy in front of  
3 you.

4 MS. KNIGHT: Do you mind if I just  
5 give him my hard copy. I'm open to the page.

6 MS. FUMERTON: Of course. That is  
7 fine.

8 A. Okay. I'm sorry.

9 Q. (BY MS. FUMERTON:) Yeah. So about  
10 halfway down on that page, you have written "all  
11 discovery responses served by defendants included  
12 in my report." And I am just trying to understand  
13 what that refers to. Could you explain?

14 A. Yeah. So when I am preparing my  
15 report, I go to the discovery responses that are  
16 filed with the court, and I review those for their  
17 content.

18 Q. So you also separately list a whole  
19 bunch of discovery responses separately, correct,  
20 if you go to just immediately above that?

21 A. I do.

22 Q. So is that supposed to capture  
23 anything other than the ones that are already cited  
24 in your report?

25 A. Yes, it is.

1           Q.       And so is it just the written  
2 responses that is served to plaintiffs?

3           A.       Yes, I don't know that there's any  
4 other responses other than written.

5           Q.       Well, that is what I am just trying  
6 to clarify, what you meant when you wrote "all  
7 discovery responses served by defendants included  
8 in my report."

9                    So I wasn't sure if it was all  
10 discovery responses that are included in your  
11 report or all discovery responses served by  
12 defendants who are included in your report.

13                   MS. KNIGHT: Oh, I see. Go ahead.

14           A.       All responses served by defendants.  
15 I think it is kind of a catchall to make sure I  
16 covered all the discovery responses, since there's  
17 so many.

18           Q.       (BY MS. FUMERTON:) Okay. But you  
19 are talking just about the written; you are not  
20 talking about all the documents produced in this  
21 case, correct?

22           A.       No. No. Just the written discovery  
23 responses.

24           Q.       Okay. Thank you. Switching topics,  
25 Walmart's distribution centers that are discussed

1 in your report were registered with the DEA as  
2 distributors of controlled substances at all times  
3 relevant to your opinions in this case, correct?

4 A. That's correct.

5 Q. And the same distribution centers  
6 were also licensed with the State of Ohio at all  
7 times relevant to your opinions in this case,  
8 correct?

9 A. That's correct.

10 Q. And you agree that the DEA has had  
11 several occasions to review Walmart's distribution  
12 practices during the time frame covered in your  
13 report, correct?

14 A. That's a correct statement. I agree  
15 with that.

16 Q. And that is also true with respect to  
17 the Ohio Board of Pharmacy, correct?

18 A. That they visited the Walmart  
19 distributors?

20 Q. Well, no, that they would have the  
21 opportunity to review, if they needed to, correct?

22 A. I'm not sure they could come to  
23 Arkansas and review the Arkansas distributors,  
24 unless you are speaking about the pharmacies in  
25 Ohio. I would agree with that.

1           Q.       Okay. So at least with respect to  
2 the pharmacies, you would agree that the Ohio Board  
3 of Pharmacy would have the opportunity to invent --  
4 to, I'm sorry, inspect Walmart pharmacies, correct?

5           A.       Yes.

6           Q.       Okay. And the DEA never revoked  
7 Walmart's distribution registrations, correct?

8           A.       That would be an accurate statement,  
9 yes.

10          Q.       And the Ohio Board of Pharmacy never  
11 revoked Walmart's licenses as a distributor,  
12 correct?

13          A.       They would not. I don't know that  
14 they would have the authority to do that, but they  
15 did not do that.

16          Q.       And the DEA never revoked the  
17 registration of any Walmart pharmacy in Lake or  
18 Trumbull County, correct?

19          A.       Not that I am aware of.

20          Q.       And the Ohio Board of Pharmacy never  
21 revoked the license of any Walmart pharmacy in Lake  
22 and Trumbull County, correct?

23          A.       Not that I am aware of.

24          Q.       Your report on Page 18 -- and that is  
25 just a reference, you don't have to pull it out

1 now, but if you would like to turn to it, that is  
2 fine. You discussed a DEA distributor briefing  
3 initiative, correct?

4 A. Yes.

5 Q. And you described that as one of the  
6 ways that distributors were informed of the  
7 regulatory obligations, correct?

8 A. Yes. I think they are informed many  
9 more oftentimes than that, but that was one of the  
10 things that happened at the distributor briefings,  
11 that is correct. That was a little more specific  
12 to internet pharmacies, but also it was also in  
13 regards to -- there's -- I recall there being a  
14 notification in the presentation that it wasn't  
15 specific to internet pharmacies. But that was the  
16 focus.

17 Q. This -- let me try that over again.  
18 Did the DEA hold the distributor briefings as part  
19 of this initiative with Walmart?

20 A. Are you asking me if they held a  
21 briefing with Walmart?

22 Q. Yeah. You describe these distributor  
23 briefing initiative, and you describe a series of  
24 meetings with a series of distributors. What I am  
25 asking you is did the DEA, as part of that

1 initiative, hold the distributor briefing with  
2 Walmart?

3 A. I don't recall seeing any  
4 documentation that that occurred.

5 Q. Did you ask plaintiffs to provide you  
6 with documentation that such a distributor briefing  
7 occurred?

8 A. I am sure I did. I don't recall  
9 seeing it in the discovery responses either.

10 Q. Okay. So you aren't aware that the  
11 DEA did eventually have a distributor briefing with  
12 Walmart in August of 2015; is that right?

13 A. I don't think I cited it in my  
14 report, so, no, I don't think I was aware of that.

15 Q. Specific to Walmart and on Page 135  
16 of your report, you conclude that, "In my opinion,  
17 the massive increase in prescription opioids  
18 without sufficient due diligence documented is  
19 indicative of a failure to maintain effective  
20 control."

21 Is that what you wrote?

22 A. That is what I wrote, yes.

23 Q. In your opinion, what is a massive  
24 increase?

25 A. It references the chart directly

1     above. So it shows within Trumbull and Lake County  
2     a steep increase up through 2012.

3             Q.       Right. So I see the chart, and we  
4     are going to talk about those in a second. What I  
5     want to understand is what, in your opinion, is a  
6     massive increase.

7             A.       Well, I think it more than doubled  
8     within six years, approximately. I would say that  
9     is a massive increase.

10            Q.       Okay. So can you -- is -- it has to  
11    be at least a doubling to be a massive increase?  
12    Is that the bare minimum it has to be to be a  
13    massive increase, or how would it be in your bounds  
14    of what a massive increase is?

15            A.       I don't know that it would have a  
16    specific amount in mind like doubling or tripling.  
17    This is regards to opioids, so I think part of it  
18    would be the type of drugs where the increase  
19    occurred, the geographic area. I think there's  
20    several factors. I think here there's a very sharp  
21    increase in the distribution of opioids.

22            Q.       Okay. And you conclude that with  
23    respect to all defendants, right?

24            A.       Yes. I think they all have very  
25    similar increases over that time period.

1           Q.       It is your opinion that the  
2 defendants all had similar increases in their  
3 distribution of opioids; is that accurate?

4           A.       Well, I would have to reference back  
5 to each one of my charts. Some of them may have  
6 started out high. So I -- just right now, the  
7 specifics in regards to Walmart, I would say that  
8 that holds true, without going through my report.

9           Q.       And does it matter to your opinion at  
10 all whether or not the doubling is the doubling of  
11 one to two versus a hundred to two hundred, or is  
12 it just the fact that it was doubled that that is a  
13 massive increase in your mind?

14          A.       Well, when you said one or two, I'm  
15 not sure I understand your question, ma'am.

16          Q.       Sure. So you can have one to two is  
17 a doubling, right?

18          A.       Oh, okay. I'm sorry. Yes.

19          Q.       A hundred to two hundred is a  
20 doubling. So I guess my point is -- or my question  
21 is, does it matter when you say there's a massive  
22 increase what the quantity is, or are you just  
23 looking at the percentage of increase?

24          A.       Well, if you are saying one pill to  
25 two pills, that wouldn't be a massive increase.

1 But I think a hundred -- a hundred and thirty, a  
2 hundred and forty thousand up over three hundred  
3 thousand, it is more than doubling. So I think  
4 that is a -- that is massive to me.

5 Q. Okay. And do you have any -- that is  
6 just your opinion? Were you using any sort of  
7 scale at all when you were reaching that  
8 conclusion, or is it just something that seemed  
9 right to you, based on your hunch?

10 A. Not a hunch. That is my opinion.

11 Q. Okay. But it is not based on  
12 anything other than just you think that's about  
13 what a massive increase is; you are not tying it to  
14 anything specific?

15 MS. KNIGHT: Objection to form.

16 Q. (BY MS. FUMERTON:) As far as a  
17 measure?

18 A. It is not to scale. There's no scale  
19 I used for this, if that is what you are asking.

20 Q. Yes, okay. So let's look at those  
21 charts briefly. And I am not going to ask you to  
22 look at them in depth, if you want to just flip  
23 through them. But I just have a question because  
24 they all sort of look, to me at least, to have a  
25 similar arc and want to see if you agree.

1                   In looking at these graphs, do you  
2                   agree that beginning in 2013 and 2014 across the  
3                   board there was a decrease in the amount of opioids  
4                   that Walmart was distributing?

5                   A.           I do.

6                   Q.           And it is your opinion that this  
7                   decrease was due to Walmart's implementation of  
8                   effective controls against diversion?

9                   A.           I think it was more likely -- my  
10                  experience would indicate while I was working that  
11                  it is more likely that it was the industry's  
12                  response to actions that were being taken by the  
13                  DEA and some reductions of quota, voluntary  
14                  reductions of quota by a manufacturer that started  
15                  the downward trend.

16                  MS. FUMERTON:   So move to strike that  
17                  answer as nonresponsive.

18                  Q.           (BY MS. FUMERTON:)   Do you think that  
19                  the decrease in the amount of opioids that Walmart  
20                  was distributing was due to Walmart's  
21                  implementation of effective controls against  
22                  diversion?

23                  MS. KNIGHT:   Objection.   Asked and  
24                  answered.

25                  A.           My previous answer, I do not.

1           Q.           (BY MS. FUMERTON:) Okay. Do you  
2 think it is indicative that a distributor might be  
3 implementing effective controls against diversion?

4           MS. KNIGHT: Objection to form.

5           A.           In regards to thinking of what SOMS  
6 was in place at the time this occurred, I don't  
7 think it was the result of the maintenance of  
8 effective controls. I think it was more likely an  
9 industry trend. If we looked at charts, I think  
10 many different distributors would have declines  
11 starting around 2012, 2013. Not all. But I think  
12 it would be pretty consistent.

13          Q.           (BY MS. FUMERTON:) So in your  
14 opinion, an increase is indicative of a lack of  
15 control. The inverse is not true, correct?

16          A.           That's correct unless I could tie it  
17 to some specific activity, I think the trend -- as  
18 I have already answered, I think if you were  
19 looking at charting not just in these two counties  
20 but throughout the country, I think you would begin  
21 to see a decline -- a begin of a decline around the  
22 2012, end of 2000 -- mid to end of 2012.

23                   I might add that that wasn't when the  
24 opioid epidemic was over, but I think there's a  
25 start of a decline of the actual distribution.

1           Q.       Your report references seven  
2       suspicious order methodologies, some of which were  
3       utilized by one or more of the defendants, correct?

4           A.       That is a correct statement.

5           Q.       Walmart did not utilize any of those  
6       seven methodologies, right?

7           A.       That is correct.

8           Q.       And you agree that a distributor did  
9       not need to use one of those seven methodologies to  
10      have a sufficient suspicious order monitoring  
11      program, correct?

12          A.       Yeah. A distributor could have  
13      designed one different from one of the  
14      methodologies and potentially be effective.

15          Q.       And, in fact, you think it would be  
16      wrong for the DEA, for example, to suggest to  
17      Walmart that it should have used one of those seven  
18      methodologies, correct?

19          A.       As part of my training as a diversion  
20      investigator, it would have been wrong for me to  
21      advocate the use of any specific system.

22          Q.       Including the seven that you have in  
23      your report, correct?

24          A.       That would be any. That would be  
25      correct. That would be encompassed to any.

1           Q.       Are you familiar with the term "order  
2 of interest"?

3           A.       I am.

4           Q.       And are you familiar with how that  
5 term was used at Walmart?

6           A.       Not specifically. I know that that  
7 was a term that was used, but not how it was  
8 integrated specifically into their SOMS.

9           Q.       Do you understand or have any  
10 understanding as to how Walmart reviewed and  
11 investigated orders of interest?

12          A.       I don't recall that specific  
13 terminology.

14          Q.       Okay. Well, even if you don't recall  
15 that specific terminology, do you recall how  
16 Walmart investigated orders that its systems had  
17 flagged?

18          A.       Yeah, I recall they didn't hardly do  
19 any -- at least not sufficient investigations.  
20 They were just cutting orders down below the  
21 thresholds. Generally speaking, I don't -- I don't  
22 recall seeing any sufficient due diligence  
23 regarding orders that exceeded the threshold.

24          Q.       So that wasn't -- well, you keep  
25 throwing in the word "sufficient," so let's back up

1 for a second.

2 Do you recall seeing any evidence  
3 that Walmart investigated orders of interest?

4 A. I recall there may have been an  
5 occasional or there may have been a few, but it  
6 wasn't a system corporate-wide application. I'm  
7 not saying --

8 Q. So is --

9 A. I'm not saying they never looked at  
10 or reviewed a potential order. But it didn't occur  
11 on a regular and consistent basis in regards to the  
12 orders that were cut or the orders that were  
13 shipped over the twenty bottles in a consistent  
14 basis.

15 Q. Okay. And is it your understanding  
16 that Walmart's primary order monitoring policy was  
17 a twenty-bottle limit?

18 A. Not at the beginning. They had a  
19 manual review, a distribution pickers review up  
20 through, I think, 2011. And it was sometime later  
21 that the over twenty bottle both for oxycodone and  
22 over twenty bottle for Schedule 2 started later,  
23 later when they started the REDDWERX system.

24 Q. Okay. And what about after that? Do  
25 you recall what Walmart did to investigate orders?

1           A.       Are you talking the REDDWERX enhanced  
2       system? Or could you me a time frame on your  
3       question, please?

4           Q.       Yeah. Sure. So any of the orders  
5       that were flagged by any of Walmart systems, do you  
6       recall what they did to investigate those orders?

7                   MS. KNIGHT: Objection to form.

8           A.       Yeah, but what date frame are you  
9       speaking?

10          Q.       (BY MS. FUMERTON:) Okay. Let's just  
11       take 2015 forward.

12          A.       Yes, I recall that they -- they had a  
13       policy change where they -- there was a potential  
14       form that they used, an Order of Interest  
15       Evaluation form appeared in a policy, but I don't  
16       recall seeing the use of that form.

17                   And then at a later date, they  
18       started to document or they indicated they  
19       documented orders of interest in the ARCHER system.  
20       I remember seeing some communications where there  
21       were -- they were -- that they were behind on  
22       entries of some information. But I have not -- I  
23       have not been provided any of the -- as far as I  
24       know, I have not seen any documentation of that --  
25       of that ARCHER entry database with regards to if

1       there was any due diligence --

2                       (Reporter clarification.)

3               A.       In regards to the orders in the  
4       ARCHER system.

5               Q.       (BY MS. FUMERTON:) If Walmart had  
6       produced its documentation of its orders in the  
7       ARCHER system, would you have liked to have  
8       reviewed that?

9               A.       I would have.

10              Q.       And you just mentioned that earlier  
11       on, during the time period that you reviewed  
12       Walmart's policies, it used associates at its  
13       distribution center to identify orders of unusual  
14       size, frequency and pattern, correct?

15              A.       I believe that was what the testimony  
16       of Ms. Hiland was. I don't recall -- there was  
17       never any written SOMS or policies or procedures  
18       outlining that. I think that was something that  
19       was part of the 30(b) deposition. And of --

20              Q.       Okay.

21              A.       -- and of some of the workers.

22              Q.       And you have no basis to disagree  
23       with that testimony, correct?

24              A.       Well, I would have liked to have seen  
25       something in writing or some proof that that

1       existed. I am not here saying that I don't believe  
2       that it didn't occur. But to be able to evaluate  
3       it, I would have liked to have seen something that  
4       would have outlined it, other than somebody saying  
5       that occurred.

6                       I recall there was no written  
7       policies or procedures, no training.

8               Q.       So if Ms. Hiland had testified that  
9       with respect to order monitoring, those associates  
10      were trained on how to identify those orders, you  
11      missed that testimony; is that right?

12                      MS. KNIGHT: Objection to form.

13              A.       You would have to restate that  
14      question. I'm sorry.

15              Q.       (BY MS. FUMERTON:) Okay. Well, you  
16      said you recall there was no written policies or  
17      procedures and no training, correct?

18              A.       That's correct.

19              Q.       And so are you saying that you didn't  
20      see anybody testify about the training that those  
21      associates received with respect to order  
22      monitoring?

23              A.       No formal training. I believe there  
24      was some comments that it was on-the-job training  
25      or kind of learning as you go. But my statement is

1 no formal training. That would be something  
2 generated by the company.

3 I -- one of the things that was  
4 really indicative to me would be Mr. Abernathy's  
5 comment about his awareness of the opioid epidemic  
6 and his position at the D.C. That was  
7 indicative --

8 MS. FUMERTON: I move to strike that.

9 Q. (BY MS. FUMERTON:) My question was  
10 with respect to training. And Ms. Hiland, in fact,  
11 did testify that those associates received training  
12 with respect to order monitoring, correct?

13 A. I don't recall that in the  
14 deposition. I recall that there was no formal  
15 training.

16 Q. Okay. And on-the-job training to you  
17 is not training?

18 A. Well, I think anything is training.  
19 But just coming in and learning from somebody else  
20 and no formal procedures or policies or no formal  
21 training, I am not sure that I would agree that  
22 would be an effective training.

23 Q. Okay. And you agree that the  
24 Controlled Substance Act and the regulations  
25 promulgated under it don't prohibit registrants

1 from relying on employee experience to fulfill  
2 their regulatory obligations, correct?

3 A. In certain -- in certain  
4 circumstances, I believe that it is possible to  
5 have a manual system. Depending on the type of  
6 activity and the volume, it may not be sufficient.  
7 But at the same time, the regulation requires that  
8 you design and operate. And I'm not sure when you  
9 have no policies, no procedures, no documentation,  
10 that that is a design, outside of just it appears  
11 to me kind of everybody telling everybody what to  
12 do. It is difficult for me to say that that would  
13 be in compliance with the regulation.

14 MS. FUMERTON: I move to strike that  
15 as nonresponsive, so I will ask my question again.

16 Q. (BY MS. FUMERTON:) The Controlled  
17 Substance Act and the regulations promulgated under  
18 it do not prohibit registrants from relying on  
19 employee experience to fulfill the regulatory  
20 obligations, correct?

21 MS. KNIGHT: You can answer.

22 A. You will have to repeat that. That  
23 is a different question, I believe.

24 Q. (BY MS. FUMERTON:) I read it  
25 verbatim, but I will read it again.

1                   You agree that the Controlled  
2                   Substances Act and the regulations promulgated  
3                   under it do not prohibit registrants from relying  
4                   on employee experience to fulfill their regulatory  
5                   obligations, correct?

6                   MS. KNIGHT: Asked and answered.

7                   A.        I don't think the regulation speaks  
8                   specifically to that. I believe earlier we were  
9                   discussing a manual system. That is what I was  
10                  responding to earlier.

11                  Q.        (BY MS. FUMERTON:) And a manual  
12                  system is not prohibited either, correct?

13                  A.        It is not what? I'm sorry.

14                  Q.        Prohibited, correct?

15                  A.        A manual system is not as long as it  
16                  is sufficient to meet the needs of the registrant.

17                  Q.        You also mentioned the twenty bottle  
18                  limit that Walmart instituted for oxy 30 in 2012;  
19                  do you recall that?

20                  A.        I do.

21                  Q.        Sorry. 2012. I said it right. Do  
22                  you know why Walmart implemented that policy?

23                  A.        Yeah, I recall seeing an email. It  
24                  was in response to concerns about diversion of  
25                  oxycodone 30 in West Virginia and Florida.

1           Q.       Do you recall testimony that it was  
2       in response to suggestions from the DEA that that  
3       might be something that they should do?

4           A.       I don't recall that in the  
5       depositions I reviewed. If you -- if you have  
6       that, I would be interested to see it.

7           Q.       You also have an opinion that Walmart  
8       did not follow its own policies to cut orders of  
9       oxycodone 30 to twenty bottles, correct?

10          A.       I --

11          Q.       So Page 138 if you want to look at  
12       it.

13          A.       I do, but I am a little confused  
14       by -- or not confused, but I'm just not sure about  
15       that statement. I know it appears in my report.

16                   I saw some documents where some  
17       emails and some databases where the over -- the  
18       four-week average would indicate that they had to  
19       be shipping over twenty bottles. So I am not  
20       confident whether or not they were complying with  
21       that.

22          Q.       You are not confident of your  
23       statement in your report that Walmart did not  
24       follow its policies limiting oxycodone to 30 -- or  
25       oxycodone 30 to twenty bottles, correct?

1           A.       So maybe that wasn't stated. I  
2       wouldn't say confident. I saw some indications  
3       that they weren't, but there wasn't enough  
4       information for me to be sure about that. I don't  
5       think I am real definitive in my statement.

6                   Based on some of the records I saw an  
7       email from, I think, Jimmy Sherrill and a database  
8       of over twenty bottle reports that it was an August  
9       database. And I'm not sure -- I think Mr. Sherrill  
10      cited in my footnotes, but the one database I am  
11      referencing, I don't believe that was cited and  
12      that was an oversight.

13           Q.       What database are you referring to?

14           A.       So I think it would be in Footnote  
15      593. I think it would be Footnote that ends with  
16      11133.

17           Q.       And I'm sorry. So what is incorrect  
18      about your Footnote?

19           A.       Walmart WMT\_MDL\_000011133. It should  
20      be over thirty database that starts in July and  
21      runs through September or October, maybe even until  
22      November.

23           Q.       Okay. And this is Footnote 593; is  
24      that right?

25           A.       Yes.

1           Q.       So I am looking at Footnote 593 and I  
2       don't see that reference.

3           A.       I just said I should have referenced  
4       it and I didn't. It was an oversight.

5           Q.       Oh, you meant to include that?

6           A.       Yes. I think I --

7           Q.       When did you realize -- how did you  
8       realize, how did you come to the realization you  
9       had that oversight?

10          A.       As I began preparing for my  
11       deposition, I went through and started reviewing  
12       again all of my cites in my report, and I  
13       discovered that.

14          Q.       Is there anything else in your report  
15       that you discovered was incorrect?

16                   MS. KNIGHT: Objection to form.

17          A.       Yes. So if we go to the charts, the  
18       methodology charts, the headings in the methodology  
19       charts for Walmart say 2006 to 2014, and I believe  
20       the methodologies were ran in a longer time period  
21       for Walmart, and it should run through -- it would  
22       correspond --

23          Q.       (BY MS. FUMERTON:) What page of the  
24       report are you looking at?

25                   MS. KNIGHT: Page 46. He is talking

1 about methodologies.

2 A. Methodologies for Walmart should run  
3 and correspond to the charts that is on Page 135.  
4 So the ending date for Walmart should be 2018 and  
5 not 2014, based on some transaction data that  
6 Walmart provided to Dr. McCann.

7 Q. (BY MS. FUMERTON:) Any other things  
8 that you are incorrect about in your report?

9 A. No.

10 MS. KNIGHT: Objection to form.

11 A. No, I believe that is it.

12 Q. (BY MS. FUMERTON:) On Page 36 [sic]  
13 you write that "I was not provided any documentary  
14 evidence that Walmart had an effective system in  
15 place to identify orders of unusual size, pattern  
16 or frequency," correct?

17 A. Page 36?

18 Q. 136.

19 A. Oh, 136. Thank you.

20 Q. Do you see that?

21 A. Yes.

22 Q. Okay. So you are not saying that  
23 such evidence does not exist, just that you were  
24 not provided it, correct?

25 A. Well, if I wasn't provided it, I

1 guess I don't know that it exists.

2 Q. Right. You are not making a claim  
3 one way or the another whether or not it exists or  
4 not. You are just saying you weren't provided it,  
5 correct?

6 A. Well, I hope if -- I hope if Walmart  
7 had it, they provided it, but I didn't see it.

8 Q. Well, Walmart has provided thousands  
9 and thousands and thousands of documents in this  
10 litigation. You didn't review those thousands and  
11 thousands and thousands of documents that Walmart  
12 provided, correct?

13 A. I can't definitively say I reviewed  
14 every document, but I reviewed enough documents  
15 that I am confident with the opinion I formed. I  
16 think that also the statement I make there is there  
17 was no written SOMS policy or procedure all the way  
18 through 2014.

19 MS. FUMERTON: Okay. I strike that  
20 as nonresponsive.

21 Q. (BY MS. FUMERTON:) My simple  
22 question was Walmart did not provide you with any  
23 documents. Plaintiffs provided you with the  
24 documents, correct?

25 A. Well, not in totality. I also

1 searched for the documents myself. I have that  
2 ability. But they assist me in providing me with  
3 documents, either through me contacting them, being  
4 with them, asking for searches. It is not that I  
5 only have access to certain documents. I can  
6 search documents myself also.

7 Q. Okay. But again, you are saying that  
8 all Walmart's entirety of its production, you  
9 looked and you didn't see a single evidence of an  
10 effective system to identify orders of unusual  
11 size, pattern or frequency?

12 A. Specifically for pattern and  
13 frequency, I don't recall anything that Walmart had  
14 in operation that dealt with pattern and frequency.

15 Q. But you are not changing your earlier  
16 testimony that you relied on documents that aren't  
17 cited in your opinion, correct? In your report?

18 MS. KNIGHT: Object to the form.

19 A. I don't think I said that.

20 Q. (BY MS. FUMERTON:) I am just  
21 asking -- I am just making sure you are not,  
22 correct?

23 MS. KNIGHT: Objection to form.

24 A. Can you say that one more time.

25 Q. (BY MS. FUMERTON:) Sure. All the

1 documents that you relied upon in forming your  
2 opinions are what is cited in your report, correct?

3 A. Yes.

4 Q. On Page 4 [sic] you write that  
5 "Walmart also knowingly allowed its pharmacies to  
6 order drugs directly from McKesson, thereby  
7 exceeding even what Walmart called 'hard limits'  
8 imposed and allowing a means of bypassing an  
9 already deficient system." Do you see that?

10 A. Would you give me the page again,  
11 please?

12 Q. 140.

13 A. I'm sorry.

14 MR. FULLER: I will have to go to  
15 140.

16 A. In the interest of time -- oh, I see,  
17 first paragraph?

18 Q. (BY MS. FUMERTON:) Yes.

19 A. Yes, I did say that.

20 Q. So it is your understanding that  
21 Walmart pharmacies could order Schedule 2  
22 substances directly from McKesson, correct?

23 A. That is correct, based on the  
24 testimony of Ms. Hiland and Mr. Abernathy.

25 Q. In forming your opinions about

1 Walmart, did you consider the control and  
2 noncontrolled substance dispensing ratio for any of  
3 the stores in Lake and Trumbull Counties?

4 A. I did not.

5 Q. On Page -- well, on Pages 23 to 33 of  
6 your report, you list some of the significant  
7 administration -- let me repeat that.

8 On Page 23 to 33 of your report, you  
9 list some of the significant administrative actions  
10 against distributors and manufacturers for failing  
11 to maintain effective controls against diversion  
12 and for failing to identify and/or report  
13 suspicious orders, correct?

14 A. Yes.

15 Q. And you list almost fifty different  
16 actions, correct?

17 A. That's correct.

18 Q. And none of them involve Walmart,  
19 right?

20 A. I put the purpose for putting those  
21 at the beginning at letter J, but you are correct,  
22 it does not involve Walmart.

23 Q. And on Pages 129 to 130 of your  
24 report, you discuss a number of government  
25 agreements that Walmart entered into, correct?

1           A.       I do.

2           Q.       And none of those settlements or  
3       agreements that are listed there involved Walmart  
4       pharmacies in Trumbull and Lake Counties, correct?

5           A.       I don't believe they do.

6           Q.       And none of the allegations in those  
7       settlements or agreements involved Walmart's  
8       conduct as a distributor, correct?

9           A.       I think in a broad sense when it  
10      talks about having an effective compliance program  
11      it does but not specific to a specific distributor.

12                   (Reporter clarification.)

13          A.       I'm sorry if I'm mumbled. I will do  
14      better.

15          Q.       (BY MS. FUMERTON:) And then at the  
16      end of that section, you comment about -- or you  
17      list a DOJ lawsuit that was commenced in December  
18      of 2020, correct?

19          A.       I do.

20          Q.       And you understand that the  
21      allegations that you recite there are simply that,  
22      allegations, correct?

23          A.       I do. They are just allegations.

24          Q.       Did you consider Walmart's response  
25      to any of those allegations in forming your

1 opinions?

2 A. I know they have responded, but I did  
3 not.

4 Q. In reaching your opinions about  
5 Walmart in this case, did you assume that those  
6 allegations are true?

7 A. Not until proven, but I think it is  
8 indicative of conduct. So I put it into the  
9 report.

10 Q. So you did not rely on those  
11 allegations in reaching your opinion, correct?

12 MS. KNIGHT: Objection to form.

13 A. It wouldn't -- it doesn't carry the  
14 strength as if it was an allegation that was proven  
15 through either an MOA or an administrative hearing  
16 in litigation, but it is something to consider  
17 because it is targeting the compliance programs.

18 Q. (BY MS. FUMERTON:) Well, then  
19 Walmart's response should be something you  
20 considered too, correct?

21 A. I think the responses that -- I think  
22 they countersued or there was some other  
23 litigation. And I think until it is resolved --  
24 that is why I said it doesn't carry the same weight  
25 as if there was some kind of litigation or a final

1 result. I think it is just indicative of more  
2 issues with compliance.

3 Q. But if you are trying to be fair, you  
4 would consider both the allegations and the  
5 response, correct?

6 A. Yes.

7 MS. FUMERTON: I have no further  
8 questions at this time, subject to any follow-up  
9 that somebody -- based on your answers to somebody  
10 else. But I do -- would like to see that one-pager  
11 that you have relating to Walmart. So I also  
12 reserve my ability to ask questions about that. So  
13 is that something we quickly -- it is only five  
14 pages -- have scanned for us?

15 MS. KNIGHT: I have the PDFs. I just  
16 need someplace to send them.

17 MS. FUMERTON: You could send them to  
18 me or/and the court reporter. It is  
19 tfumerton@jonesday.com. Why don't we go off the  
20 record while we talk about this.

21 THE VIDEOGRAPHER: This ends Media  
22 Unit Number 2 in the deposition of James Rafalski.  
23 The time is 3:53 p.m. We are going off the record.

24 (Whereupon, a break was had from 3:53  
25 p.m. until 4:22 p.m. EDT)

1 THE VIDEOGRAPHER: This begins Media  
2 Unit Number 3 in the deposition of James Rafalski.  
3 The time is 4:23 p.m. We are back on the record.  
4

5 EXAMINATION BY MR. RUIZ:

6 Q. Good afternoon, Mr. Rafalski.

7 A. Good afternoon.

8 Q. My name is Anthony Ruiz, and I  
9 represent both CVS entities in this case. I want  
10 to just quickly ask you a couple of questions about  
11 Walmart Exhibit 1, which are the notes that you  
12 brought with you here today.

13 A. Sure. Go ahead, sir.

14 Q. Earlier you testified that you put  
15 together the notes relating to Walmart by yourself.  
16 Do you recall that?

17 A. Yes.

18 Q. Is that true for the notes for the  
19 other defendants as well?

20 A. That's correct. All five of these I  
21 did myself.

22 Q. Okay. When did you prepare these  
23 notes?

24 A. Over the last several days.

25 Q. I want to turn to your report, which

1 is Giant Eagle Exhibit 2. Do you agree that your  
2 opinions as they relate to CVS's SOMS system are  
3 substantially the same as your opinions in your  
4 earlier report in the MDL?

5 A. In regards to CT1, sir?

6 Q. Yeah.

7 A. That is correct.

8 Q. Do you recall how much time you spent  
9 on the CVS portion of your Track 3 report?

10 A. I do not, sir. Not as much time as I  
11 spent on the three reports. This would be the  
12 first opinion on those three companies. I spent  
13 considerably more, but I didn't keep a running  
14 total of the time on CVS.

15 Q. Do you think it was fewer than ten  
16 hours?

17 A. No. I would say it was probably a  
18 little more than that. But then you have to take  
19 into account that I started working on CVS three  
20 years ago, and it has kind of been a continuation  
21 during the last three years.

22 Q. You said earlier that you have spoken  
23 with Dr. McCann. Do you recall that?

24 A. I have, numerous times.

25 Q. Have you talked to any other

1 plaintiffs' experts in connection with your report?

2 A. In regards to CT3, that would be a  
3 no.

4 Q. Have you spoken with any other  
5 plaintiffs' experts in regards to CT3 generally?

6 A. No.

7 Q. Let's turn to Page 46 of your report,  
8 if we could.

9 A. Okay.

10 Q. Do you see for Method A for Lake  
11 County under CVS, it says that 91.8 percent of the  
12 hydrocodone dosage units distributed by CVS are  
13 flagged by Method A?

14 A. I agree with that, sir.

15 Q. If CVS hadn't distributed those  
16 pills, do you know how many cancer patients would  
17 have been deprived of their medications?

18 A. No. But that doesn't say that they  
19 weren't shipped. That says that those were the  
20 orders that were flagged as part of the methodology  
21 in applying the assumption. It is not indicating  
22 that those pills were not shipped.

23 Q. That is not my question. My question  
24 is if CVS had not shipped those pills, do you know  
25 how many cancer patients would have been deprived

1 of their medication?

2 A. That is a theoretical question,  
3 hypothetical, and I do not.

4 Q. Do you know how many patients  
5 recovering from surgery would not have been able to  
6 fill their prescriptions?

7 A. Same response. If that is  
8 hypothetical, I do not know.

9 Q. Do you know how many hospice patients  
10 would not have been able to fill their  
11 prescriptions?

12 A. No, I do not.

13 Q. Do you know how many prescriptions  
14 written for legitimate medical purposes would not  
15 have been filled if those pills were not shipped?

16 A. No, sir, I do not.

17 Q. I want to skip to a different part of  
18 your report where you talk about the distributor  
19 briefing. I am not going to reference anything  
20 specific, so you don't need to flip through unless  
21 you want to.

22 In your report, you mention a number  
23 of distributors that received DEA distributor  
24 briefings --

25 THE REPORTER: I'm sorry. I couldn't

1 understand the initials, the acronym.

2 Q. (BY MR. RUIZ:) I said in your  
3 report, you mention a number of distributors -- of  
4 distributors that received DEA distributor  
5 briefings.

6 A. Yes, sir, I do.

7 Q. Do you know if CVS received one?

8 A. I do not recall reviewing a record  
9 that indicated they did, or a deposition.

10 Q. I want to talk about your CVS opinion  
11 specifically. You provide opinions relating to  
12 CVS's distribution activities, correct?

13 A. I do.

14 Q. In your report, you don't discuss any  
15 specific CVS pharmacy in Lake or Trumbull County?

16 A. In regards to an opinion, I do not.

17 Q. You are aware that CVS only  
18 distributed to its own pharmacy?

19 A. Yes, I am. And only hydrocodone.

20 Q. And you are aware that CVS stopped  
21 distributing hydrocodone in 2014 when it was  
22 rescheduled to Schedule 2?

23 A. Yes, I do know that.

24 Q. So it has been approximately almost  
25 seven years since CVS distributed hydrocodone?

1           A.       A little less but approximately, yes.

2           Q.       Would you agree with me that a lot of  
3 your opinions relating to CVS's SOMS system are  
4 based on the absence of records or documentation?

5                   MS. KNIGHT:   Objection to form.

6           A.       Specifically on the SOMS, I don't  
7 totally agree with that.   If it is in regards to  
8 the maintenance of effective controls -- that would  
9 be a more accurate answer or more accurate  
10 question -- I would say I do.

11           Q.       (BY MR. RUIZ:)   Can you parse that  
12 out for me?   What do you mean?

13           A.       Well, I think I have a good  
14 understanding of the SOMS, how it is designed and  
15 how it operated.   So I don't think, in regards to  
16 your question, my opinion is not because I don't  
17 have sufficient information.   I think the area  
18 where I didn't see any sufficient information would  
19 have been the due diligence that would have been  
20 conducted in a more formal and systematic way.

21           Q.       I understand.   Okay.   So you are  
22 basing your opinion relating to due diligence on  
23 the lack of documentary evidence today based on  
24 events that occurred in 2010, 2011, 2012; is that  
25 right?

1           A.       Yes. So just for clarification,  
2       documentary -- I am looking for a total -- a total  
3       number of things, not just -- not just some pieces  
4       of paper and documents. Policies, procedures, some  
5       evidence that due diligence was conducted, how  
6       pharmacies were open, all the due diligence that  
7       would occur, not just related to a suspicious order  
8       but in just conducting the business activity of a  
9       distributor in a pharmacy -- with the pharmacy. I  
10      am sorry.

11          Q.       And my question is that you are  
12      basing your opinion relating to that due diligence  
13      based on the lack of evidence that you see in the  
14      paper record on those points?

15          A.       That is a correct statement, sir,  
16      yes. I would agree generally with that.

17          Q.       And you testified earlier that in  
18      your opinion, distributors should retain records  
19      related to their distribution of hydrocodone, even  
20      after -- even years after they have stopped  
21      distributing that product, correct?

22          A.       Yes, I did state that earlier, and I  
23      do believe that.

24          Q.       So if a pharmacy has been open since  
25      the 1980s, is it your opinion that CVS should have

1     kept documentation relating to orders that were  
2     shipped more than thirty years ago?

3             A.       I don't know if I would be as  
4     definitive thirty years ago. But even records,  
5     when they stopped distributing, which would be six  
6     and a half or almost seven years ago, I still think  
7     they should retain those records. Because I could  
8     see a need where, you know, they are now conducting  
9     business using Cardinal, where Cardinal may rely on  
10    some of that activity prior to their distribution.

11            So I am not advocating they keep  
12    records forever, but I think there's a  
13    reasonableness to that also.

14            Q.       What is the -- what is the cutoff for  
15    you between six and thirty years? When can a  
16    distributor get rid of records?

17            A.       I think it would be more specific to  
18    the type of due diligence. If it was something  
19    severe, some kind of activity involving a pharmacy  
20    and some employees and personnel, I think that  
21    would be more significant in a longer time period.

22            If it was some due diligence that  
23    was, say, for example, some people do site -- not  
24    site visits, they do a monitoring where they sit  
25    outside and watch for out-of-state license plates.

1 If one of those was thirty years old, I am not so  
2 sure that would need to be retained.

3 But it would be up to the distributor  
4 to, you know, provide those records that would show  
5 what actions they took.

6 Q. What you just testified to there, has  
7 that been provided in any DEA guidance to  
8 registrants?

9 MS. KNIGHT: Objection to form.

10 A. That specific guidance, I am not  
11 aware that it was ever provided by the DEA. I  
12 think the only guidance that I was aware of is in  
13 the distributor briefings. I attended two of them,  
14 and the comment was made, "If it is not written  
15 down, it didn't happen." That would be the exact  
16 statement that they say at the distributor  
17 briefing. And I am aware that also is not in the  
18 law.

19 Q. (BY MR. RUIZ:) And you also don't  
20 know whether or when CVS received a distributor  
21 briefing, right?

22 A. I do not, sir.

23 Q. In your report, you discussed a 2013  
24 DEA inspection of CVS's Indiana distribution  
25 center. Do you recall that?

1 A. The page, please?

2 Q. 62.

3 MS. KNIGHT: What page, Mr. Ruiz?

4 MR. RUIZ: 62.

5 A. Just trying to save time, sir. Thank  
6 you.

7 Q. (BY MR. RUIZ:) I understand.

8 A. Okay.

9 Q. You don't mention any other DEA  
10 inspections of CVS facilities in your report,  
11 correct?

12 A. I believe that is a correct  
13 statement, yes, sir.

14 Q. Are you aware of any?

15 A. Not one that had the kind of  
16 interaction between the company and the DEA as  
17 this. I'm sure there was regulatory inspections  
18 before and after this one.

19 Q. So my question was, are you aware of  
20 any other DEA inspections, yes or no?

21 A. I don't recall seeing any records or  
22 DEA 6s involves other inspections.

23 Q. Did you ask to review any?

24 A. I don't know that I specifically  
25 asked. That would be something that, since I have

1     been doing this for a few years, three years now,  
2     that would be something that would be loaded in,  
3     depending on how it was provided, especially in  
4     discovery.

5                     If it was -- if it was something that  
6     was provided in a response to one of the discovery  
7     questions, I am fairly certain that I would have  
8     reviewed it. If it wasn't, I don't recall seeing  
9     any indications. I do -- in looking at all the  
10    records, sometimes there's an email about a DEA  
11    visit. I saw one earlier from a different company.  
12    Those are -- those are sometimes in the records. I  
13    don't have a specific recollection of one of those  
14    for CVS.

15                    Q.     And if it is not listed in your  
16    report or in the materials on Schedule I of your  
17    report, that means that you did not rely on it,  
18    correct?

19                    A.     If it is not in Schedule I, then I  
20    did not review it. That is correct.

21                    Q.     Let's turn to Page 77 of your report.

22                    A.     Okay. Go ahead.

23                    Q.     In the middle paragraph, the  
24    paragraph that starts with "On February 12th,  
25    2013" --

1 A. Yes.

2 Q. -- the last two sentences of that  
3 paragraph, so the second-to-last sentence says, "I  
4 have been informed that a random spot-check of the  
5 orders flagged for additional review corresponds  
6 with the orders shown on the IRR recap." Do you  
7 see that?

8 A. I do.

9 Q. Who informed you about that random  
10 spot-check?

11 A. I don't understand the question, sir.

12 Q. Well, you are not saying that you did  
13 the spot-check, right? Someone else did it?

14 A. Yeah. I don't -- I don't recall why  
15 that was there. I think maybe some of this  
16 information was provided by one of the plaintiffs'  
17 attorneys. And I reviewed it and reviewed the  
18 footnotes attached.

19 Q. So did you do a random spot-check  
20 yourself?

21 A. Of the -- of the -- I don't know that  
22 this was the entirety, but it was brought to my  
23 attention by one of the plaintiffs' attorneys. And  
24 I went and reviewed the footnotes and confirmed the  
25 content and adapted it into my report.

1           Q.       So instead of saying "I have been  
2 informed that a random spot-check," it should say  
3 "I conducted a random spot-check," because you did  
4 it yourself?

5                   MS. KNIGHT: Object to the form.

6           A.       I don't know that I would write it  
7 like that. I think the documents could inform me.

8                   But I think there was some  
9 collaboration on this particular part of the  
10 report.

11           Q.       (BY MR. RUIZ:) Is that true for the  
12 next sentence where you also write, "I have also  
13 been informed"?

14           A.       I believe so. I don't have a direct  
15 recollection, but I believe so, sir.

16           Q.       Let's turn to the next page, Page 78.  
17 And at the bottom paragraph, the last sentence  
18 says, "Additional investigation could include  
19 review of patient profiles, such as the age,  
20 distance traveled and method of payment, review of  
21 ratios" -- do you see where I am reading?

22           A.       No. I'm sorry. What page again?

23           Q.       Page 78.

24           A.       Oh, I'm sorry. Wrong page.

25           Q.       And it is the last paragraph at the

1 bottom.

2 A. I see that.

3 Q. And it says there that "Additional  
4 investigation could include review of," and then it  
5 lists a number of things. Do you see that?

6 A. I do.

7 Q. Did you conduct any of these analyses  
8 that you list here?

9 A. No, I did not. I put these in the  
10 report because these are things that would be  
11 readily available for CVS to do. It is not  
12 something I did in writing my opinion, preparing my  
13 opinion.

14 Q. Did you ask to review any of this  
15 information for any CVS pharmacies in Lake or  
16 Trumbull County?

17 A. I did not. And I -- and so, in  
18 second to that, this would be some of the things  
19 that I might expect to see in due diligence records  
20 in regards to a review of materials for a pharmacy  
21 for a suspicious order for other reasons, and I did  
22 not see that. That is the other purpose for being  
23 in the report.

24 Q. I didn't ask why you included it in  
25 your report. My question is, did you ask to review

1 any of this information for any CVS pharmacies in  
2 Lake or Trumbull County?

3 And the answer is no, correct?

4 A. I did not.

5 MS. KNIGHT: I --

6 Q. (BY MR. RUIZ:) Did you do any  
7 analysis of the control to noncontrol ratio for any  
8 CVS pharmacy in Lake or Trumbull County?

9 A. I did not.

10 Q. Did you do any analysis of the  
11 geographic area surrounding any CVS pharmacy in  
12 Lake or Trumbull County?

13 A. I did over the course of preparing my  
14 report. I did some Google Maps and placed all the  
15 pharmacies surrounding certain -- in certain areas  
16 of Lake and Trumbull County. I did that in regards  
17 to a lot of different reasons.

18 But I did do some geographic mapping.  
19 I also looked at pharmacies for each of the  
20 defendants to see how close they were to each other  
21 in regards to their dispensing totals to see any  
22 vast differences.

23 So, yes, I did do that. It is not in  
24 my report, but I did do that as I was preparing my  
25 report.

1           Q.       So it is not in your report and  
2       there's nothing in your -- in your materials  
3       considered that tells us what you did, correct?

4           A.       I am not sure how I would put Google  
5       Mapping in just looking at geographic locations.  
6       So, no, there's no reliance document for that. It  
7       is just something I did. You asked me the  
8       question, sir. I am just trying to provide you  
9       with the answer.

10          Q.       Did you do any analysis of the  
11       overall market share that CVS's distribution of  
12       hydrocodone combination products accounted for in  
13       Lake and Trumbull Counties?

14          A.       I did not. I think there's some  
15       information in Dr. McCann's report that could be  
16       indicative of that, but I did not do any analysis.

17          Q.       And you don't say anything about that  
18       in your report, correct?

19          A.       I do not. My opinion isn't based on  
20       who has the least or the most market share. It was  
21       just in regards to the two areas I provided an  
22       opinion on.

23          Q.       And similarly, you didn't do any  
24       analysis of the overall market share of CVS's  
25       dispensing of opioids in Lake or Trumbull County,

1 correct?

2 A. That's correct. I didn't use that in  
3 formulating my opinion.

4 Q. Are you aware of any enforcement  
5 action, administrative action or civil proceeding  
6 where a pharmacy has been held responsible for  
7 shipments made by an outside vendor?

8 A. Well, I have done cases when I was  
9 with the DEA that resulted from purchases from an  
10 outside vendor, so I am unsure I understand your  
11 question.

12 Q. Let me try it again. Are you aware  
13 of any enforcement action, administrative action or  
14 civil proceeding where a pharmacy was the one held  
15 responsible for shipments that were made by an  
16 outside vendor?

17 A. Purchases, not shipments.

18 Q. What do you mean by -- what do you  
19 mean by purchases?

20 A. So, for example, I had several cases  
21 where pharmacies were buying products from a  
22 distributor and there was diversion occurring or  
23 illicit dispensing. Those purchases from those  
24 distributors were part and parcel of the  
25 administrative or criminal actions that went

1 against them. Maybe I still don't understand your  
2 question.

3 Q. I'm not sure if I -- if I understand  
4 your answer. What cases are you thinking of?

5 A. We talked about one earlier,  
6 SafeScript Pharmacy, in my deposition. That result  
7 of that was the action taken, and the conviction  
8 was based on the purchases made by the pharmacy of  
9 a specific drug from a distributor. The whole  
10 conduct couldn't have occurred without the  
11 purchases of the drugs.

12 Q. Any others?

13 A. I have done other cases that would  
14 have similar circumstances. I don't know that they  
15 are open to public knowledge, so I would have to be  
16 probably Touhy -- be careful of discussing those,  
17 since they haven't been discussed. And I'm not  
18 aware there's anything public available about it.  
19 But, yes, there are.

20 Q. Have you ever been contacted by  
21 plaintiffs' attorneys for the Mobile County Board  
22 of Health in Alabama?

23 A. I have.

24 Q. I'm sorry?

25 A. Yes, I have.

1           Q.       Did you agree to be an expert in that  
2 case?

3           A.       I did not.

4           Q.       Did you agree to submit an expert  
5 report in that case?

6           A.       I did not.

7           Q.       Are you aware that the plaintiffs in  
8 that case submitted your MDL Track 1 report in that  
9 case?

10          A.       I am. My recollection is they  
11 advised me after they did it.

12                   MR. RUIZ: I don't think I have any  
13 other questions. If we could just take five  
14 minutes.

15          A.       Okay.

16                   THE VIDEOGRAPHER: This ends Media  
17 Unit Number 3 in the deposition of James Rafalski.  
18 The time is 4:49 p.m. We are going off the record.

19                   (Whereupon, a break was had from 4:49  
20 p.m. until 4:02 p.m. EDT)

21                   THE VIDEOGRAPHER: This begins Media  
22 Unit Number 4 in the deposition of James Rafalski.  
23 The time is 5:03 p.m. We are back on the record.

24          Q.       (BY MR. LIVINGSTON:) Okay.

25          Mr. Rafalski, can you look at --

1 MR. FULLER: Waited a minute. Hold  
2 on. Hold on, Scott. I'm sorry. Is Mr. Diaz  
3 done -- Ruiz?

4 MR. LIVINGSTON: I don't know who  
5 Diaz is, but Mr. Ruiz is done.

6 MR. FULLER: Are we done or -- here  
7 is where my confusion comes. I sent the email that  
8 we were going seven hours and/or until 5:00. It is  
9 after 5:00. So if we are not on the verge of being  
10 done in the next few minutes --

11 THE REPORTER: I'm sorry. You're  
12 breaking up --

13 MR. LIVINGSTON: You are breaking up.

14 THE REPORTER: I can't hear you.

15 MR. FULLER: Mr. Rafalski showed up  
16 extra early this morning.

17 MS. SWIFT: Can we go off the record  
18 if we are going to fight about something?

19 MR. FULLER: No, it can be on the  
20 record. We were going to be done by 5:00 --

21 MS. SWIFT: This is not going to come  
22 out of our time. Please go off the record. We are  
23 trying to be as efficient as possible, Mike. Let's  
24 go off the record. If you want to talk about this,  
25 this's fine.

1 THE VIDEOGRAPHER: This ends Media  
2 Unit 4 in the deposition of James Rafalski. The  
3 time is 5:04 p.m. We are going off the record.

4 (Whereupon, a break was had from 5:04  
5 p.m. until 5:15 p.m. EDT)

6 THE VIDEOGRAPHER: This begins Media  
7 Unit Number 5 in the deposition of James Rafalski.  
8 The time is 5:16 p.m. We are back on the record.

9 MS. SWIFT: Plaintiffs have told us  
10 they don't want to complete the deposition today.  
11 We have about forty plus minutes left of the seven  
12 hours that we thought we were going to get today.

13 We have a total of 8.75 hours  
14 allotted to us, and Mr. Rafalski has indicated that  
15 he is tired and would prefer to start tomorrow  
16 morning again.

17 We are putting this statement on the  
18 record because we have another expert deposition of  
19 Craig McCann starting at 8:00 a.m. tomorrow and we  
20 need to finish that in order to keep our schedule,  
21 which has already moved once, in light of the  
22 Court's orders on our motion to strike.

23 And so we object to stopping now. It  
24 is only 5:17 Eastern Time. And we would prefer to  
25 go at least until the seven-hour mark, which is

1     what we thought we were going to get today but  
2     plaintiffs have objected to that. And so, you  
3     know, we will start again tomorrow.

4                 We are reserving all 8.75 hours that  
5     we are entitled to and to the time we are allotted  
6     after whatever direct plaintiffs think they are  
7     going to do, though I will note for the record also  
8     that we object to the notion that plaintiffs are  
9     going to do a direct of their expert who has  
10    indicated he is coming live to testify at trial.

11                But with that and all of those rights  
12    reserved, we will stop today. Does anybody, any of  
13    the other defendants want to make any statement on  
14    the record? Did I leave anything out?

15                MR. LIVINGSTON: Yes. I would like  
16    to just add a couple of things. One is I want to  
17    make sure we don't leave until we set a starting  
18    time for tomorrow and, number two and even more  
19    important, ask the witness not to review any  
20    exhibits that were sent by the defendants that have  
21    not yet been disclosed and used in your deposition  
22    pursuant to the deposition protocol. You are not  
23    to get notice of those until they are used actually  
24    in the deposition, so --

25                A. In response to that, they will be

1 left locked in the room. I don't have access.

2 MR. LIVINGSTON: I was assuming you  
3 weren't anxious to look at them, but I just wanted  
4 to make sure.

5 MS. MCENROE: I'm picking up on  
6 Mr. Livingston's request as well. I just want to  
7 point out that you are still on cross-examination,  
8 so any discussion with plaintiffs' counsel would be  
9 improper and highly prejudicial. So you are not to  
10 discuss your testimony whatsoever that you have  
11 already given or you intent to give with plaintiffs  
12 this evening.

13 You know, you are still sort of under  
14 oath in the time between now and when we return  
15 together tomorrow.

16 A. I understand.

17 MS. SWIFT: On the start time, I  
18 can't remember if we emailed about that, Mike. Is  
19 8:00 a.m. -- I am going to be deposing Craig  
20 McCann, so it is not really my issue but --

21 MR. FULLER: Yeah. The only thing I  
22 need to check is if I have any obligations tomorrow  
23 morning for the trial that I am in. I can email  
24 you guys probably within an hour.

25 MS. SWIFT: And I can't see if

1 Page -- oh, there is Page. Page, we have got the  
2 court reporter and everything lined up for 8:00  
3 a.m. with Dr. McCann tomorrow morning.

4 MS. POERSCHKE: Okay. So we are  
5 still planning to start at 8:00, right?

6 MS. SWIFT: Correct. That is  
7 absolutely right. Have you received the exhibits,  
8 our --

9 MS. POERSCHKE: I got -- I got your  
10 box. We got your box. And McCann got your box.  
11 And we got an envelope from Walmart. And that is  
12 it. Does that sound right, everybody?

13 MS. SWIFT: It does to me. Thank  
14 you. Anything else?

15 MR. FULLER: The only thing I would  
16 ask Ralph and Kathleen to check on is if Kate's box  
17 did make it. Then I don't know that they have both  
18 seen that.

19 MS. SWIFT: We got confirmation -- my  
20 team sent me a note saying who signed for both of  
21 the boxes we sent for Mr. Rafalski. I can't  
22 speak -- I can't speak for the one that went to  
23 McHugh Fuller, but I am staying at a hotel right  
24 now too, and I know it is hard to get stuff from  
25 the front desk.

1 MS. KNIGHT: Yes. We definitely got  
2 everything that was here as of last night that made  
3 it to the front desk, so we will check when we get  
4 out of here and see if something came in.

5 MS. SWIFT: We have been in New York  
6 all week, and I have had to like cross-examine  
7 people to get my own boxes because they end up in  
8 different places. The only reason I'm saying that  
9 is I would like you to track them down if, you  
10 could, so you could just destroy them. Because  
11 there's -- I don't remember what all is in there.  
12 But if you can throw them away in a safe way, that  
13 would be great.

14 MS. KNIGHT: We will definitely --  
15 we'll check with the front desk and see what is  
16 there.

17 MR. FULLER: Let me ask on the  
18 defense side, are you guys fine starting at 8:00 if  
19 I can work on my side?

20 MR. LIVINGSTON: Actually, I would  
21 prefer a more humane start. But obviously if you  
22 guys want to start at 8:00, I'm not going to have a  
23 hissy fit about it.

24 MS. FUMERTON: That's a good way to  
25 put it.

1 MS. KNIGHT: The only thing I suggest  
2 is for those that are trying to maybe pop over to  
3 the McCann deposition, that starting earlier would  
4 be better.

5 MR. FULLER: Okay. Let me just check  
6 with the trial team here and make sure that works  
7 for me. And I will send an email to everybody,  
8 okay? Or at least those of you that I have your  
9 emails. All right. Thanks.

10 MS. SWIFT: That is all. Thanks,  
11 Mike.

12 SPECIAL MASTER COHEN: This is -- let  
13 me -- this is David. I know that I am coming in at  
14 the very end and I have missed quite a bit. And it  
15 appears that you are making arrangements for  
16 continuing Rafalski tomorrow. Let me offer a  
17 suggestion. I think I heard that the defendants  
18 think that there's something like forty, forty-five  
19 more minutes; is that right?

20 MR. FULLER: That is just for their  
21 seven hours, David, and they may go beyond that to  
22 their 8.75.

23 SPECIAL MASTER COHEN: Well, here is  
24 what is likely, right. It is likely that if  
25 defendants were to continue today, they wouldn't

1 take the hour and three-quarters they have left.  
2 But if they continue tomorrow, they are much more  
3 likely to take the hour and three-quarters they  
4 have left, which they are entitled to do. And I  
5 said it was up to Mr. Rafalski.

6 So let me just make this suggestion.  
7 Here is another option. I know you are tired. I  
8 know everyone is tired. But if you were to take,  
9 say, an hour-and-a-half break, have dinner, take a  
10 little chill, come back and start -- I'm just  
11 making this up as I go -- at 7:00 tonight for  
12 forty-five minutes, no longer, then you can finish  
13 it tonight, if defendants will agree to that.  
14 Forty-five minutes tonight. Otherwise start early  
15 tomorrow and you have got an hour and -- an hour  
16 and three-quarters.

17 So I am just trying to figure out a  
18 way to make everyone's life easier, including  
19 Mr. Rafalski, the defendants and plaintiffs. You  
20 know, maybe that works; maybe it doesn't. Maybe  
21 right away you already know. I will ask  
22 Mr. Rafalski, is that something that you are  
23 willing to do?

24 A. I would like to get done today, but I  
25 am not confident that it would be the forty-five

1 minutes.

2 SPECIAL MASTER COHEN: I understand.  
3 That is why I say they have to commit to forty-five  
4 minutes and it is over. They may say they are not  
5 willing to.

6 MS. KNIGHT: We have questions.

7 MR. FULLER: We are going to have  
8 some cross, so I don't know that that will  
9 necessarily work. And that was part of the  
10 discussion we were having earlier, why I decided to  
11 come back in the morning.

12 MS. SWIFT: We object to that, but I  
13 get -- you know, I get --

14 SPECIAL MASTER COHEN: Everyone has  
15 got to agree or it doesn't work, so --

16 MR. FULLER: But thank you for the  
17 suggestion.

18 SPECIAL MASTER COHEN: All right.  
19 So -- and as long as I am on with y'all, so I will  
20 be joining you then for the McCann depo and not the  
21 continuation of the Rafalski? Is that how this is  
22 going to work?

23 MS. SWIFT: If you wouldn't mind,  
24 David, let us caucus among ourselves, you know, and  
25 decide --

1 SPECIAL MASTER COHEN: That is fine.

2 MS. SWIFT: -- if it is okay with you  
3 where we would like to put you because you might  
4 have to bounce back and forth, if that's okay with  
5 you.

6 SPECIAL MASTER COHEN: I can do that.

7 MS. SWIFT: Okay. Thank you.

8 SPECIAL MASTER COHEN: Alrighty,  
9 everybody. Thank you.

10 MR. LIVINGSTON: Before we just  
11 close, I just want to make sure that the  
12 videographer does not include the time we have just  
13 had on the record.

14 MS. SWIFT: Oh, I actually want it on  
15 the record, Scott.

16 MR. LIVINGSTON: Well, you have got  
17 to put -- you've got to put it on the record, but  
18 it is not part of our substantive examination of  
19 the witness. We have got a procedural issue here.

20 MS. SWIFT: Understood. Yes, that is  
21 fair. It shouldn't come out of our time, but it  
22 should be on the transcript.

23 MR. LIVINGSTON: Yeah. No, I want it  
24 on the transcript. I'm just saying it shouldn't  
25 count against us for the 8.75 hours.

1 SPECIAL MASTER COHEN: That is  
2 correct.

3 MS. SWIFT: Thank you, Scott.

4 SPECIAL MASTER COHEN: Okay.

5 MR. FULLER: Thanks everybody.

6 MS. SWIFT: Have a good night, guys.

7 THE VIDEOGRAPHER: This ends today's  
8 deposition of James Rafalski. The time is 5:25  
9 p.m. We are going off the record.

10 (Whereupon, the deposition of  
11 James Rafalski was adjourned at  
12 5:25 p.m. EDT on June 10, 2021,  
13 to be reconvened at 8:00 a.m. EDT  
14 on June 11, 2021.)  
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C E R T I F I C A T E

STATE OF ALABAMA

JEFFERSON COUNTY

I hereby certify that the above and foregoing deposition was taken down by me in stenotypy, and the questions and answers thereto were reduced to typewriting under my supervision, and that the foregoing represents a true and correct transcript of the deposition given by said witness upon said hearing, to the best of my ability.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.



LAURA H. NICHOLS

Commissioner-Notary Public, State of AL  
ACCR License No. 3, Exp. 9/30/2021

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TN LCR No. 679, Exp. 6/30/2021

Transcript Certified on 6/14/2021

Veritext Legal Solutions  
1100 Superior Ave  
Suite 1820  
Cleveland, Ohio 44114  
Phone: 216-523-1313

June 15, 2021

To: Kathleen Knight, Esq.

Case Name: National Prescription Opiate Litigation - Track 3 v.

Veritext Reference Number: 4629482

Witness: James Rafalski                      Deposition Date: 6/10/2021

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to [production-midwest@veritext.com](mailto:production-midwest@veritext.com).

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,  
Production Department

NO NOTARY REQUIRED IN CA

DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4629482

CASE NAME: National Prescription Opiate Litigation - Track 3 v.

DATE OF DEPOSITION: 6/10/2021

WITNESS' NAME: James Rafalski

In accordance with the Rules of Civil  
Procedure, I have read the entire transcript of  
my testimony or it has been read to me.

I have made no changes to the testimony  
as transcribed by the court reporter.

\_\_\_\_\_  
Date James Rafalski

Sworn to and subscribed before me, a  
Notary Public in and for the State and County,  
the referenced witness did personally appear  
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn  
Statement; and

Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

DEPOSITION REVIEW  
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4629482

CASE NAME: National Prescription Opiate Litigation - Track 3 v.

DATE OF DEPOSITION: 6/10/2021

WITNESS' NAME: James Rafalski

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

\_\_\_\_\_  
Date

\_\_\_\_\_  
James Rafalski

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;  
They have listed all of their corrections  
in the appended Errata Sheet;  
They signed the foregoing Sworn  
Statement; and  
Their execution of this Statement is of  
their free act and deed.

I have affixed my name and official seal  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expiration Date

## ERRATA SHEET

VERITEXT LEGAL SOLUTIONS MIDWEST

ASSIGNMENT NO: 4629482

| PAGE/LINE (S) | CHANGE | /REASON |
|---------------|--------|---------|
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Date \_\_\_\_\_ James Rafalski \_\_\_\_\_  
SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 20\_\_\_\_.

Notary Public

Commission Expiration Date

[&amp; - 2]

Page 1

|                               |                          |                           |                           |
|-------------------------------|--------------------------|---------------------------|---------------------------|
| <b>&amp;</b>                  | <b>1/12/2010</b> 18:15   | <b>123</b> 286:5          | <b>15910</b> 12:19        |
| <b>&amp;</b> 2:17 3:7,16 6:11 | <b>1/28/2008</b> 18:6    | <b>128-9</b> 14:16        | <b>16</b> 14:10 15:25     |
| 8:11,19 11:19                 | <b>1/4</b> 136:7         | <b>129</b> 335:23         | 102:2 106:2 186:8         |
| 12:9,18 14:13,14              | <b>10</b> 1:18 14:11     | <b>12:45</b> 232:7,12     | 186:22                    |
| 14:22 245:14                  | 19:21 23:9 119:22        | <b>12:51</b> 245:3,5      | <b>16.6</b> 136:5         |
| <b>0</b>                      | 119:22,23,25             | <b>12th</b> 349:24        | <b>160</b> 13:6           |
| <b>00000609</b> 13:24         | 123:8 288:24             | <b>13</b> 17:17 20:13     | <b>1600</b> 12:20         |
| <b>000011133</b> 329:19       | 297:14,20 368:12         | 54:12 128:12              | <b>168-9</b> 16:23        |
| <b>0016954</b> 18:7           | <b>10/4/2010</b> 20:11   | 195:2 228:20              | <b>17</b> 1:6 14:16 63:24 |
| <b>0020799</b> 20:20          | <b>100</b> 4:9           | 289:14                    | 128:8,8,9                 |
| <b>0020801</b> 20:21          | <b>1000</b> 7:11         | <b>130</b> 335:23         | <b>1701</b> 8:12          |
| <b>0068316</b> 18:12          | <b>101</b> 8:20          | <b>130-16</b> 15:23       | <b>18</b> 14:19 16:6      |
| <b>0068320</b> 18:16          | <b>10178-0060</b> 8:21   | <b>1301.01</b> 258:15     | 63:25 133:1,2             |
| <b>0068321</b> 18:20          | <b>108</b> 245:20 252:4  | <b>1301.71</b> 86:10 87:4 | 215:12 301:12             |
| <b>0068326</b> 18:24          | <b>10940</b> 4:8         | 87:8 88:15                | 311:24                    |
| <b>0068329</b> 19:8           | <b>10:05</b> 160:10      | <b>1301.72</b> 87:23      | <b>18.4</b> 208:4         |
| <b>0068331</b> 19:12          | <b>10th</b> 23:16        | 88:12,16                  | <b>1800</b> 7:10          |
| <b>0068332</b> 19:16          | <b>11</b> 20:5 123:8     | <b>1301.74</b> 68:19      | <b>1820</b> 370:2         |
| <b>0068335</b> 19:20          | 188:23 289:4             | <b>1301.76</b> 87:23      | <b>184-23</b> 17:5        |
| <b>0068337</b> 19:24          | 368:14                   | 88:12,17                  | <b>18409</b> 369:22       |
| <b>0068339</b> 20:8           | <b>11.5</b> 208:8        | <b>1306.04.</b> 263:20    | <b>19</b> 15:4 121:12     |
| <b>0068341</b> 20:12          | <b>1100</b> 370:1        | <b>1311</b> 3:17          | 137:25 138:1              |
| <b>0068346</b> 20:15          | <b>11133</b> 329:16      | <b>133-2</b> 14:19        | 141:20 199:19             |
| <b>0068347</b> 20:16          | <b>113</b> 270:14 277:21 | <b>134-17</b> 15:8        | <b>190-4</b> 17:8         |
| <b>00907</b> 3:19             | 283:22 293:4             | <b>135</b> 313:15 331:3   | <b>19103-2921</b> 8:13    |
| <b>04</b> 129:21              | <b>114</b> 284:5         | <b>136</b> 331:18,19      | <b>196-20</b> 17:12       |
| <b>07068</b> 11:21            | <b>114-18</b> 15:13      | <b>138</b> 328:11         | <b>1980s</b> 345:25       |
| <b>1</b>                      | <b>115</b> 286:6         | <b>138-1</b> 15:4         | <b>199-06</b> 16:8        |
| <b>1</b> 14:23 15:11,22       | <b>119-23</b> 14:11      | <b>14</b> 20:17 252:10    | <b>1:53</b> 245:5,7       |
| 16:23 17:11 18:4              | <b>11:05</b> 160:7       | 295:23                    | <b>1st</b> 190:15         |
| 21:4 30:4 50:11               | <b>11:18</b> 160:10,12   | <b>140</b> 334:12,15      | <b>2</b>                  |
| 50:13,15,24 51:13             | <b>11:21</b> 164:1,3     | <b>141-15</b> 16:10       | <b>2</b> 13:14 17:5 18:9  |
| 52:4,11 54:17                 | <b>11:23</b> 164:3,5     | <b>15</b> 181:9 215:12    | 30:8,12 31:13,15          |
| 55:7,11 168:5,9               | <b>11th</b> 197:11       | 299:11 370:4              | 31:20 32:14 38:14         |
| 197:25 198:1                  | 296:13,16                | <b>150</b> 105:16         | 58:16 63:10,21            |
| 273:1,2,9,11                  | <b>12</b> 20:9 195:1,5   | <b>150-4</b> 16:14        | 64:17 98:13               |
| 295:22 303:6                  | 289:9                    | <b>151</b> 105:16         | 101:16 107:1              |
| 304:15,16 306:10              | <b>12/28/2009</b> 18:11  | <b>152</b> 105:14 106:2   | 138:19 163:2              |
| 339:11 357:8                  | <b>121</b> 299:14        | 106:13                    | 164:8 184:22,23           |
|                               | <b>122</b> 300:13        | <b>15219</b> 6:14 12:12   | 186:8 191:6               |
|                               |                          |                           | 198:20,25 217:19          |

|  |  |   |   |
|--|--|---|---|
| 273:11 285:10,18<br>286:15 298:3<br>303:11 307:6<br>321:22 334:21<br>338:22 340:1<br>343:22<br><b>2/2/2010</b> 18:19<br><b>20</b> 14:23 15:8<br>134:16,16,17<br>217:19 371:16<br>372:22 373:22<br><b>200</b> 5:8<br><b>2000</b> 100:21<br>204:23 318:22<br><b>2003</b> 16:9 99:11<br><b>20036-5807</b> 7:12<br><b>2004</b> 59:13 64:21<br>66:2 72:6 99:15<br>99:19<br><b>2005</b> 99:22 129:8<br>129:21 138:21<br><b>2006</b> 14:23 16:25<br>17:7 42:24 131:25<br>133:10 139:25,25<br>170:4 171:22<br>172:7,18 185:18<br>187:5,24 209:15<br>252:6 286:11<br>330:19<br><b>2007</b> 138:22<br><b>2008</b> 15:11 16:17<br>274:9<br><b>2009</b> 100:22 101:2<br>101:20 123:8<br>141:21 183:12<br>186:25 187:8,9<br>194:19,21 195:5<br>195:22 200:17,24<br>201:22 202:10,17<br>204:23 205:9,13<br>206:11 287:6,13 | <b>2010</b> 17:11 61:16<br>187:15 188:21,25<br>190:16 230:15<br>287:20,24 288:4<br>288:10,17,22<br>289:1,7,12 290:8<br>290:22 291:7<br>294:13 344:24<br><b>2011</b> 61:16 187:21<br>188:4 197:11,16<br>198:9 321:20<br>344:24<br><b>2012</b> 104:21<br>120:14 121:1<br>123:6 126:2<br>296:17 314:2<br>318:11,22,22<br>327:18,21 344:24<br><b>2013</b> 120:25<br>231:14 317:2<br>318:11 347:23<br>349:25<br><b>2014</b> 16:25 17:7<br>101:13,20 102:2,9<br>102:17,18,23<br>103:1 170:5<br>171:23 172:7,18<br>185:18 187:5,24<br>228:14,15 229:5<br>230:1 252:6,8,13<br>266:22 284:13<br>286:11 317:2<br>330:19 331:5<br>332:18 343:21<br><b>2015</b> 106:2 313:12<br>322:11<br><b>2016</b> 100:16,17,18<br>100:22 101:4,19<br>101:25 102:19<br><b>2017</b> 53:8,9 56:6<br>56:18 59:14 64:21 | 284:9<br><b>2018</b> 15:11 16:17<br>56:20 121:12<br>284:9,9 331:4<br><b>2019</b> 14:7,18,23<br>51:13 133:10<br><b>202</b> 3:18 7:13<br><b>2020</b> 15:25 17:17<br>336:18<br><b>2021</b> 1:18 14:10<br>16:7 23:9,17<br>230:13 368:12,14<br>370:4<br><b>212</b> 8:22<br><b>214</b> 9:11<br><b>214-8</b> 17:14<br><b>215</b> 8:14<br><b>216</b> 2:21 9:20<br><b>216-523-1313</b><br>370:3<br><b>216-9000</b> 10:10,18<br><b>21usc823</b> 258:13<br><b>2200</b> 9:8<br><b>2249</b> 181:16<br><b>23</b> 335:5,8<br><b>235-11</b> 21:12<br><b>24</b> 13:4,5 15:13<br>114:17,18<br><b>241</b> 221:16<br><b>242</b> 219:13 221:7,8<br>221:20<br><b>24400</b> 9:18<br><b>245</b> 13:7<br><b>24th</b> 3:9<br><b>25</b> 14:7 51:13<br><b>25338-3843</b> 5:9<br><b>26</b> 16:7 63:25<br><b>260</b> 128:8,12<br><b>261-2220</b> 2:11<br><b>2714</b> 369:24 | <b>273-2</b> 18:4<br><b>28</b> 10:8,16 14:18<br>181:17<br><b>2800</b> 9:9<br><b>2804</b> 1:5,6<br><b>286-15</b> 18:9<br><b>287-10</b> 18:13<br><b>287-17</b> 18:17<br><b>287-25</b> 18:21<br><b>288-11</b> 19:9<br><b>288-14</b> 19:13<br><b>288-19</b> 19:17<br><b>288-24</b> 19:21<br><b>288-5</b> 19:5<br><b>289-14</b> 20:13<br><b>289-4</b> 20:5<br><b>289-9</b> 20:9<br><b>2900</b> 2:18<br><b>293-8244</b> 3:20<br><b>294644</b> 10:9,17<br><b>295-23</b> 20:17<br><b>2nd</b> 2:19<br><b>3</b><br><b>3</b> 17:8 18:13 23:20<br>24:8,24 25:5<br>31:21 41:15 50:12<br>52:14,21 53:2<br>101:3,16 147:25<br>190:3,4 199:8<br>232:21 245:19<br>273:12 287:10<br>298:6 306:24<br>339:2 340:9<br>357:17 369:23<br>370:6 371:3 372:3<br><b>3/1/2010</b> 18:23<br><b>30</b> 15:19,22 17:16<br>40:23 57:19,20<br>127:22 140:14<br>214:22 215:16<br>302:17 323:19 |
|--|--|---|---|

[30 - 8/2/2010]

Page 3

|  |   |  |  |
|--|---|--|--|
| 327:18,25 328:9<br>328:24,25<br><b>300</b> 9:18<br><b>3011</b> 3:8<br><b>302</b> 131:7<br><b>303</b> 13:8<br><b>304</b> 5:10<br><b>304-17</b> 21:4<br><b>309-6000</b> 8:22<br><b>30s</b> 134:22,23<br>135:5,5<br><b>31</b> 15:11 214:21<br>215:10<br><b>31-15</b> 13:14<br><b>312</b> 5:20 7:24<br><b>313</b> 3:11<br><b>3151</b> 267:2,12<br><b>316</b> 4:19<br><b>3182</b> 268:8,11<br><b>32</b> 15:23 130:15,16<br><b>32502</b> 4:20<br><b>33</b> 139:15 335:5,8<br><b>339</b> 13:9<br><b>3390</b> 181:5<br><b>345-0200</b> 5:10<br><b>35</b> 286:14 287:2<br><b>3500</b> 5:18<br><b>35th</b> 6:13 12:11<br><b>36</b> 287:9 294:11<br>331:12,17<br><b>37</b> 287:16<br><b>377</b> 16:9<br><b>38</b> 287:23<br><b>39</b> 191:22 288:3<br><b>39402</b> 2:10<br><b>3:09</b> 303:9,12 | 287:17 334:4<br>357:22 359:2<br><b>4.02</b> 136:7<br><b>4/06/2010</b> 19:7<br><b>4/1/2022</b> 369:24<br><b>40</b> 288:9<br><b>41</b> 288:17<br><b>412</b> 6:15 12:13<br><b>42</b> 16:5 63:22<br>288:21 307:12,15<br>307:22,23,24<br><b>43</b> 289:2<br><b>435-7000</b> 4:21<br><b>44</b> 289:6<br><b>44113</b> 2:20<br><b>44114</b> 370:2<br><b>44122</b> 9:19<br><b>45</b> 289:11<br><b>46</b> 16:8 99:6,9<br>164:11 254:18,25<br>330:25 341:7<br><b>4629482</b> 370:7<br>371:2 372:2 373:2<br><b>471-3490</b> 6:15<br>12:13<br><b>48202</b> 3:10<br><b>49</b> 16:10 141:14,15<br>191:22<br><b>494-4400</b> 7:24<br><b>498</b> 300:15<br><b>4:02</b> 357:20<br><b>4:22</b> 338:25<br><b>4:23</b> 339:3 | <b>5/3/2010</b> 19:11<br><b>50</b> 16:14 150:3,4<br><b>5027</b> 180:25<br><b>51</b> 164:19 166:19<br>166:25 255:7,7<br><b>51-7</b> 14:5<br><b>52-23</b> 14:8<br><b>526-1836</b> 10:24<br><b>54</b> 7:22<br><b>57-20</b> 15:19<br><b>5881</b> 185:22 186:3<br>186:10<br><b>59</b> 51:17 199:24<br><b>593</b> 329:15,23<br>330:1<br><b>5:00</b> 358:8,9,20<br><b>5:03</b> 357:23<br><b>5:15</b> 359:5<br><b>5:16</b> 359:8<br><b>5:17</b> 359:24 | <b>64</b> 201:2<br><b>65</b> 52:21<br><b>659-5200</b> 4:11<br><b>66</b> 201:7<br><b>679</b> 369:24<br><b>68</b> 52:22 202:14<br><b>69</b> 51:17<br><b>6s</b> 250:13,20<br>348:22   |
|  |   |  | <b>7</b>   |
|  |   |  | <b>7</b> 19:9 64:16<br>106:25 111:18<br>129:8 288:11<br>289:19 290:3,5<br>291:5<br><b>7.6</b> 204:22<br><b>7/11/2012</b> 20:19<br><b>7/6/2010</b> 19:19<br><b>713</b> 4:11<br><b>72</b> 88:4<br><b>740-8000</b> 9:11<br><b>75</b> 195:12<br><b>75201</b> 9:10<br><b>76</b> 88:4<br><b>77</b> 5:18 349:21<br><b>77064</b> 4:10<br><b>778-1800</b> 7:13<br><b>78</b> 351:16,23<br><b>781-1111</b> 2:21<br><b>782-3939</b> 5:20<br><b>7:00</b> 365:11 |
|  |   |  | <b>8</b>   |
|  |   |  | <b>8</b> 14:5 19:13 51:7<br>51:10 273:1<br>288:14<br><b>8.75</b> 359:13 360:4<br>367:25<br><b>8.75.</b> 364:22<br><b>8/2/2010</b> 19:23  |
| <b>4</b> 17:12 18:17<br>196:20,22 198:2,2<br>273:1,9,11,12,12<br>285:10,18 286:9   | <b>5</b><br><b>5</b> 11:20 17:14<br>18:21 54:12 98:13<br>139:17 140:5<br>199:9 214:7,8<br>287:25 295:22<br>359:7  | <b>6</b><br><b>6</b> 13:22 17:16 19:5<br>54:13 86:6,6,7,14<br>86:14,16 129:8<br>195:13 208:2<br>214:22 215:16<br>288:5<br><b>6/1/2010</b> 19:15<br><b>6/10/2021</b> 370:8<br>371:3 372:3<br><b>6/14/2021</b> 369:25<br><b>6/30/2021</b> 369:24<br><b>60</b> 200:12<br><b>600</b> 181:13<br><b>601</b> 2:11<br><b>60601-1692</b> 5:19<br><b>60654</b> 7:23<br><b>61</b> 128:8<br><b>62</b> 200:21 348:2,4<br><b>63-22</b> 16:5                  |  |

|  |   |  |   |
|--|---|--|---|
| <b>80</b> 62:7 138:23<br>139:6 140:13<br>228:14,22 229:1<br><b>800-4166</b> 3:11<br><b>804</b> 171:17,20<br>176:10 180:19<br>185:16<br><b>80mg</b> 16:15<br><b>80s</b> 135:19<br><b>818</b> 12:22<br><b>82</b> 215:4 231:17,18<br><b>823</b> 258:12<br><b>83</b> 232:4,15<br><b>831-0001</b> 9:20<br><b>839-2333</b> 12:22<br><b>84</b> 206:22<br><b>843</b> 10:10,18<br><b>85</b> 207:18<br><b>850</b> 4:21<br><b>86</b> 208:2<br><b>86-7</b> 13:22<br><b>866</b> 10:24<br><b>89</b> 62:7<br><b>8:09</b> 23:10,17 | <b>963-5076</b> 8:14<br><b>97</b> 2:9<br><b>973-994-1700</b><br>11:22<br><b>9:32</b> 83:2,4   | <b>access</b> 83:12 142:3<br>221:21 250:7<br>333:5 361:1<br><b>account</b> 33:22,23<br>141:25 142:11<br>143:1,5 144:8,11<br>144:13 223:5<br>225:2,11 256:19<br>340:19<br><b>accountability</b><br>297:16<br><b>accountable</b><br>265:18<br><b>accounted</b> 208:4,8<br>354:12<br><b>accr</b> 369:23<br><b>accumulate</b> 200:3<br><b>accuracy</b> 32:3<br><b>accurate</b> 27:4<br>32:18,20,25 33:8<br>43:22 47:4,8 48:3<br>53:14 58:1,5 66:3<br>67:5 69:5 70:2<br>96:13 109:25<br>115:9 120:22<br>121:19 128:12<br>138:17 139:8<br>151:14 152:8<br>183:6 198:17<br>218:16 223:12<br>228:1 252:9<br>264:17 272:18<br>292:18 306:6<br>311:8 315:3 344:9<br>344:9<br><b>accurately</b> 165:13<br><b>accusing</b> 248:8<br><b>acknowledge</b><br>84:15 371:11<br>372:16 | <b>acknowledging</b><br>256:9<br><b>acquaintance</b><br>141:8<br><b>acronym</b> 61:12<br>343:1<br><b>act</b> 77:23 86:11<br>161:24 261:20<br>264:1 265:5,8,15<br>325:24 326:17<br>327:2 371:14<br>372:20<br><b>acted</b> 41:21 43:11<br><b>acting</b> 23:4 55:16<br>56:1 159:17<br>161:20 263:24<br><b>action</b> 77:17 78:1<br>261:3 264:8 281:2<br>293:3 355:5,5,13<br>355:13 356:7<br>369:16<br><b>actions</b> 230:21<br>264:19 280:9,12<br>280:16,23 281:14<br>281:24 282:15<br>283:2,12,23 284:4<br>285:6 292:13<br>317:12 335:9,16<br>347:5 355:25<br><b>active</b> 143:2<br><b>activities</b> 43:21<br>44:1 47:1 50:16<br>50:20 51:3 70:10<br>112:25 153:19<br>229:12 248:7<br>343:12<br><b>activity</b> 68:7,9<br>70:17,25 145:16<br>156:17 174:8<br>184:17 211:9<br>248:5 318:17 |
| <b>9</b>   | <b>a</b>  |  |   |
| <b>9</b> 14:8 19:17 42:10<br>52:20,22,23 86:6<br>86:18,21 170:7<br>221:19 241:2<br>267:9 288:19<br><b>9.8</b> 133:13,24<br><b>9/30/2021</b> 369:23<br><b>9/8/2010</b> 20:7<br><b>91.8</b> 341:11<br><b>91436</b> 12:21<br><b>939</b> 3:20<br><b>94</b> 234:24 235:1<br>237:19 238:15<br><b>94.7</b> 256:4,21<br><b>95</b> 62:7 195:13<br>237:9,19 238:15   | <b>a.m.</b> 23:10,17<br>82:25 83:2,2,4<br>160:7,10,10,12<br>164:1,3,3,5 359:19<br>361:19 362:3<br>368:13<br><b>abatement</b> 33:2<br><b>abc</b> 162:5,6<br><b>abernathy</b> 334:24<br><b>abernathy's</b> 325:4<br><b>abilities</b> 142:14<br><b>ability</b> 44:15 60:12<br>76:18,23 112:20<br>137:23 194:16<br>333:2 338:12<br>369:14<br><b>able</b> 67:10,16,17<br>68:14 79:15 81:12<br>82:7 90:20 142:3<br>173:14 217:15<br>278:14 324:2<br>342:5,10<br><b>absence</b> 344:4<br><b>absent</b> 265:25<br><b>absolute</b> 39:13<br><b>absolutely</b> 39:1<br>74:13 112:3<br>290:13 362:7<br><b>abston</b> 4:5<br><b>abuse</b> 17:9 139:9<br>190:14 191:10,13<br>192:11<br><b>abused</b> 135:6<br><b>accept</b> 297:25 |  |   |

|   |   |  |   |
|---|---|--|---|
| 326:6 345:8<br>346:10,19<br><b>acts</b> 266:7<br><b>actual</b> 44:16 77:13<br>99:23 115:20<br>236:5 257:3<br>265:15 280:24<br>283:12 299:4<br>318:25<br><b>adapted</b> 350:25<br><b>add</b> 166:24 274:18<br>318:23 360:16<br><b>added</b> 182:4<br><b>addition</b> 306:4<br><b>additional</b> 196:16<br>202:24 350:5<br>351:18 352:3<br><b>address</b> 177:25<br>207:21 247:23<br>267:16 370:15<br><b>addressed</b> 301:2<br><b>adjourned</b> 368:11<br><b>administration</b><br>335:7<br><b>administrative</b><br>79:5 264:8 283:2<br>285:6 335:9<br>337:15 355:5,13<br>355:25<br><b>administratively</b><br>260:25<br><b>administrator</b><br>87:21 88:18<br><b>administrator's</b><br>66:6<br><b>admonishment</b><br>111:14<br><b>admonition</b> 77:20<br>77:22 78:5 292:6<br><b>advance</b> 60:4<br>92:12 95:8 | <b>advanced</b> 281:15<br><b>advancing</b> 251:5<br><b>advice</b> 145:2<br><b>advised</b> 357:11<br><b>advocacy</b> 28:24<br><b>advocate</b> 29:8<br>319:21<br><b>advocating</b> 346:11<br><b>affect</b> 37:17<br><b>affixed</b> 371:15<br>372:21<br><b>afternoon</b> 245:11<br>245:16,18 303:15<br>339:6,7<br><b>age</b> 62:4,14 351:19<br><b>agency</b> 17:16<br>85:10<br><b>agent</b> 60:12 61:5<br>61:20 62:3,14<br>66:17 156:25<br><b>agents</b> 60:9,18,25<br>61:22 66:14<br>156:20 158:14<br>159:16<br><b>aggregate</b> 92:6,9<br><b>agnello</b> 11:19<br><b>ago</b> 85:9 142:13<br>195:19 229:12<br>230:5 235:19,23<br>245:12 250:21<br>266:20 268:15<br>340:20 346:2,4,6<br><b>agree</b> 26:6,19<br>29:22 34:1,5,14,19<br>34:23 35:9,18,23<br>35:25 36:5,8,21<br>47:13 51:25 53:5<br>67:12 71:22 79:15<br>80:5 82:11 84:13<br>90:25 91:7,11<br>92:16 94:20 95:16 | 95:22 96:15 97:11<br>97:23 98:6 102:7<br>105:10 106:16<br>110:21 111:5<br>112:13 115:7,24<br>116:11,18 117:7<br>117:12 118:7,11<br>120:11,22 121:24<br>125:4 133:16<br>134:9 137:1,21<br>139:3 142:24<br>148:13 149:13<br>150:1 151:14<br>171:15,19,25<br>172:4 177:6,8,18<br>179:18 182:3,10<br>186:1 188:18<br>189:2 196:4,14<br>200:7 202:8<br>212:22 213:13,17<br>214:11,16 216:6<br>216:22 217:2,13<br>217:17 218:1,5,7<br>223:14,25 226:25<br>229:3,7 234:22<br>251:1 253:17,23<br>260:11 265:21<br>266:13,16,20<br>272:12 281:9<br>282:12 291:13<br>310:10,14,25<br>311:2 316:25<br>317:2 319:8<br>325:21,23 327:1<br>340:1 341:14<br>344:2,7 345:16<br>357:1,4 365:13<br>366:15<br><b>agreeable</b> 215:25<br><b>agreed</b> 22:2 237:5 | <b>agreement</b> 31:7<br>78:16 79:20<br>158:10 213:20<br><b>agreements</b><br>335:25 336:3,7<br><b>ahead</b> 29:19<br>139:15 153:11<br>168:23 251:16<br>263:1,6 291:3<br>307:14 309:13<br>339:13 349:22<br><b>aid</b> 8:4,5,5,7 18:1<br>18:7,12,16,20,24<br>19:1,8,12,16,20,24<br>20:1,8,12,15,16,20<br>20:21 21:6 25:15<br>50:21 51:21 52:10<br>53:2 158:1 167:9<br>245:14,23 246:1,4<br>246:5,6,22 247:13<br>248:8 249:15<br>250:12 251:13<br>252:2 253:19,20<br>253:21 254:8<br>255:1,23 256:9,20<br>257:2,3,24,25<br>258:24 259:7<br>266:20,25 267:2<br>268:23 270:17,19<br>271:6 274:8 276:3<br>276:9,10 279:12<br>280:9 283:14<br>284:13,21 285:1<br>285:25 286:25<br>288:17 291:7<br>292:6,13,21<br>293:16 297:18<br>298:9 299:18,21<br>300:18,22,24<br>301:2,3,14,15,19<br>301:21 |
|---|---|--|---|

[aid's - applied]

Page 6

|   |  |  |   |
|---|--|--|---|
| <b>aid's</b> 248:22 251:6<br>254:1 256:24<br>293:11<br><b>aids</b> 157:8<br><b>aj</b> 2:13<br><b>al</b> 18:6 20:19<br>369:23<br><b>alabama</b> 23:3,4<br>356:22 369:4<br><b>alarming</b> 123:10<br>134:10<br><b>albany</b> 291:16<br><b>alex.abston</b> 4:12<br><b>alexandra</b> 4:5<br><b>algorithm</b> 113:7<br><b>allegation</b> 248:12<br>337:14<br><b>allegations</b> 280:17<br>336:6,21,22,23,25<br>337:6,11 338:4<br><b>alleged</b> 280:15<br>281:13 282:2<br><b>alliance</b> 7:16<br><b>allotted</b> 29:13<br>359:14 360:5<br><b>allow</b> 95:21 171:4<br>216:17 220:24<br><b>allowed</b> 219:5<br>270:20 334:5<br><b>allowing</b> 334:8<br><b>allows</b> 112:20,23<br><b>alprazolam</b> 207:1<br>207:14<br><b>alrighty</b> 367:8<br><b>amanda</b> 10:13<br><b>america</b> 209:4<br><b>american</b> 199:14<br>203:5,6,15 204:8<br>204:21 205:7,18<br>206:15,23,25<br>207:20 208:12,13 | <b>amerisourceberg...</b><br>26:15 300:17<br><b>amiss</b> 149:10<br><b>amount</b> 33:20<br>58:13 108:8<br>135:13 137:20<br>148:23 158:6<br>170:13 174:6<br>242:20 314:16<br>317:3,19<br><b>amounts</b> 35:7<br>48:11 200:13<br>202:23 276:22<br><b>analyses</b> 352:7<br><b>analysis</b> 13:15<br>42:7 45:25 84:22<br>97:6 98:2 106:20<br>106:23 120:6<br>134:20 158:20<br>162:10,19,21<br>164:20 165:17<br>167:2,14,18 170:8<br>172:9 173:3,13<br>174:5 179:14<br>206:2 207:5,12,15<br>208:15,20,25<br>211:4 240:7 353:7<br>353:10 354:10,16<br>354:24<br><b>analyst</b> 10:6<br><b>analysts</b> 83:12<br><b>analyze</b> 51:3<br>107:20 112:7<br>140:13 165:14<br><b>analyzed</b> 98:5<br>140:15<br><b>anna</b> 20:19<br><b>annual</b> 96:18<br>189:25<br><b>answer</b> 27:20<br>28:25 41:5,6 | 46:18 53:25 54:3<br>56:9,12,23 74:2,11<br>84:25 85:2,3 94:1<br>96:5,14 117:21<br>124:8 128:24<br>134:4 143:8<br>150:20 151:1<br>214:13,25 215:9<br>215:12,15 216:4,5<br>216:7,22 217:24<br>218:12,13 222:2,7<br>224:15 225:20<br>230:7 240:11<br>253:14 261:1,8<br>262:4,14 263:2,21<br>295:6 317:17,25<br>326:21 344:9<br>353:3 354:9 356:4<br><b>answered</b> 74:9<br>82:10 93:22<br>119:19 124:17<br>147:6 212:24<br>213:16,25 224:21<br>227:23 230:6,16<br>238:9 240:9 262:5<br>267:25 270:5,11<br>303:2 317:24<br>318:18 327:6<br><b>answering</b> 39:12<br>41:10 45:20,23<br>75:7 262:21<br><b>answers</b> 29:3 32:4<br>41:11 338:9 369:9<br><b>anthony</b> 7:7 339:8<br><b>anti</b> 110:15<br><b>anxious</b> 361:3<br><b>anybody</b> 24:15<br>238:6 248:13<br>260:4 305:16<br>324:20 360:12 | <b>anymore</b> 119:14<br>277:2 291:20<br><b>anytime</b> 176:19<br><b>anywise</b> 369:17<br><b>aol.com</b> 141:20<br><b>apologize</b> 129:17<br>189:19 199:5<br>243:2 272:21<br>273:11 285:14<br>289:18<br><b>apparently</b> 118:1<br>131:25<br><b>appear</b> 299:11<br>371:11 372:15<br><b>appearance</b> 30:16<br><b>appeared</b> 100:20<br>322:15<br><b>appearing</b> 2:2 3:2<br>4:2 5:2 6:2 7:2 8:2<br>9:2 10:2 11:2,11<br>12:1<br><b>appears</b> 31:22<br>51:25 170:7<br>277:12 293:25<br>326:10 328:15<br>364:15<br><b>appellate</b> 66:7<br><b>appended</b> 372:11<br>372:18<br><b>appendix</b> 42:10<br>232:21<br><b>applicable</b> 46:17<br>48:21 67:18 72:12<br>76:4 85:17<br><b>applicant</b> 88:20<br><b>applicant's</b> 67:15<br><b>applicants</b> 87:11<br><b>application</b> 135:2<br>165:9,11 321:6<br><b>applied</b> 34:17<br>35:20 36:2,7,11 |
|---|--|--|---|

[applied - aunterreiner]

Page 7

|  |  |  |  |
|--|--|--|--|
| 37:4 48:10 51:25<br>60:7 116:21,24<br>128:2 255:12<br>264:24<br><b>applies</b> 263:22<br><b>apply</b> 36:15 62:2<br>68:8 70:22 118:4<br>154:21<br><b>applying</b> 49:21<br>67:1 255:16,18<br>341:21<br><b>appreciate</b> 119:8<br>176:20,21 189:16<br>273:25 283:9<br><b>appropriate</b> 74:14<br>74:24 131:24,24<br>167:23<br><b>approval</b> 82:13<br>259:9<br><b>approve</b> 67:14<br>277:6<br><b>approved</b> 36:11<br>277:13<br><b>approximately</b><br>23:17 82:25 83:4<br>128:14 148:21<br>160:12 164:1,5<br>201:5 206:25<br>207:20 208:4,8<br>245:3 314:8<br>343:24 344:1<br><b>april</b> 14:10 141:20<br>228:14,15 229:5<br>288:10<br><b>arc</b> 316:25<br><b>archer</b> 322:19,25<br>323:4,7<br><b>arcos</b> 83:10,13<br>195:14,16 199:25<br>200:3 203:3<br>204:14,19 244:21 | 252:6<br><b>area</b> 40:5 44:23<br>63:5 97:5 111:17<br>124:3 128:17<br>145:13,24 178:24<br>242:1 293:25<br>295:5 314:19<br>344:17 353:11<br><b>areas</b> 40:4 64:14<br>82:11 150:25<br>242:8,10 244:5,21<br>249:21 353:15<br>354:21<br><b>arkansas</b> 310:23<br>310:23<br><b>arrangements</b><br>364:15<br><b>arrest</b> 60:12,14<br><b>arrests</b> 60:19<br><b>article</b> 193:10<br><b>aruiz</b> 7:14<br><b>aruta</b> 201:3<br><b>asked</b> 44:14,20<br>45:23 46:2,5,9<br>50:23 52:8 58:12<br>64:2 85:1 93:22<br>96:16 102:13<br>108:14,16 113:3<br>117:3 124:11,17<br>124:18 128:12<br>142:5,19 143:12<br>147:5 167:21<br>180:2 210:1,19<br>216:8 217:19<br>221:23 224:21<br>227:23 230:6,16<br>238:6 240:9 254:4<br>267:25 270:6,11<br>278:23 285:5<br>293:19 295:13<br>302:16 305:21 | 306:2,18 317:23<br>327:6 348:25<br>354:7<br><b>asking</b> 27:11 33:1<br>49:5 57:3 59:6<br>83:19 95:24<br>114:11 145:2<br>174:19 193:22<br>213:2,2,6 221:20<br>238:5,7,8 249:10<br>264:6 267:22<br>284:16 293:7<br>312:20,25 316:19<br>333:4,21<br><b>asks</b> 29:6<br><b>aspect</b> 68:17<br><b>aspects</b> 44:18 68:4<br>212:2<br><b>assembly</b> 190:20<br><b>assessment</b> 174:11<br><b>assign</b> 22:12<br><b>assignment</b> 63:5<br>179:5 371:2 372:2<br>373:2<br><b>assist</b> 83:21 333:2<br><b>assistance</b> 37:24<br>293:19<br><b>associates</b> 199:1<br>297:1 323:12<br>324:9,21 325:11<br><b>assume</b> 27:21 29:6<br>78:2 89:14 96:25<br>117:22 138:8<br>204:18 337:5<br><b>assuming</b> 81:7<br>117:4 120:9 121:5<br>133:15 361:2<br><b>assumption</b> 34:2<br>39:7 249:11<br>341:21 | <b>assumptions</b> 29:4<br>154:14<br><b>atlantic</b> 8:6<br><b>attached</b> 38:13<br>350:18 372:7<br><b>attachment</b> 20:18<br>296:6 297:13<br><b>attempt</b> 29:12<br>90:9 240:13<br><b>attempted</b> 274:22<br><b>attended</b> 262:23<br>347:13<br><b>attention</b> 40:19<br>63:24 295:21<br>350:23<br><b>attorney</b> 2:16 3:6<br>3:15 4:6 5:6 7:8<br>7:19 8:10,18 9:6<br>12:17 24:17<br>245:13<br><b>attorneys</b> 2:7 4:16<br>5:16 6:10 11:17<br>12:8 40:2 54:22<br>57:1,1 59:10<br>158:23 350:17,23<br>356:21<br><b>attribute</b> 162:11<br><b>attributing</b> 166:5<br>166:8<br><b>aubel</b> 5:5<br><b>audit</b> 73:6 296:12<br>296:25 297:14<br>298:4<br><b>auditors</b> 236:23<br><b>audits</b> 235:2,15,21<br>236:3 237:5,20,24<br><b>august</b> 139:25<br>197:11 289:7<br>313:12 329:8<br><b>aunterreiner</b><br>10:19 |
|--|--|--|--|

[authority - believe]

Page 8

|  |   |   |   |
|--|---|---|---|
| <p><b>authority</b> 60:19<br/>61:24 266:17<br/>311:14<br/><b>authorization</b><br/>219:6<br/><b>authorize</b> 372:11<br/><b>authorized</b> 221:22<br/><b>auto</b> 143:7<br/><b>automated</b> 113:9<br/><b>available</b> 35:4<br/>75:17 85:6,10<br/>126:25 269:25<br/>270:4 352:11<br/>356:18<br/><b>ave</b> 370:1<br/><b>avenue</b> 2:18 8:20<br/>9:8<br/><b>average</b> 16:15<br/>90:8 117:15<br/>126:21 133:11<br/>148:17 150:10<br/>154:25 328:18<br/><b>aware</b> 25:9,14<br/>29:8 30:25 36:6<br/>37:11 47:11 60:8<br/>60:10 64:12 65:16<br/>79:23 91:21 98:24<br/>103:20 129:6,7<br/>130:21,22 141:5<br/>143:25 146:14<br/>156:24 157:9<br/>158:13,19,22<br/>183:19 194:12<br/>205:4 207:22<br/>210:25 211:10,16<br/>212:18 233:15<br/>248:14 254:11<br/>311:19,23 313:10<br/>313:14 343:17,20<br/>347:11,12,17<br/>348:14,19 355:4</p> | <p>355:12 356:18<br/>357:7<br/><b>awareness</b> 266:5<br/>325:5<br/><b>b</b><br/><b>b</b> 8:5,7 17:16<br/>40:23 68:19 88:15<br/>127:22 183:2<br/>214:22 215:16<br/>258:13 302:17<br/>323:19<br/><b>back</b> 27:1 37:6<br/>52:15,17 62:7<br/>72:3,5 73:19 77:2<br/>83:8 101:19<br/>115:14 127:7<br/>176:6 196:11<br/>216:7 226:15<br/>231:10 238:10<br/>253:25 266:19<br/>267:20 272:23<br/>273:15 277:7,10<br/>277:21 278:25<br/>284:20 290:6,17<br/>290:19 291:5,14<br/>294:8 303:12<br/>315:4 320:25<br/>339:3 357:23<br/>359:8 365:10<br/>366:11 367:4<br/>370:15<br/><b>background</b> 143:9<br/>176:15<br/><b>bad</b> 44:22 60:25<br/>98:9 122:17,21,24<br/>123:13 138:15,16<br/>146:22 157:4,18<br/>293:22<br/><b>ballpark</b> 47:2 57:6<br/>242:18</p> | <p><b>bar</b> 115:19 153:8<br/><b>barber</b> 86:16<br/><b>bare</b> 314:12<br/><b>barely</b> 119:3<br/><b>baron</b> 12:18<br/><b>baronbudd.com</b><br/>12:23<br/><b>barr</b> 4:18<br/><b>bartlit</b> 7:20 161:10<br/>163:10,13<br/><b>bartlitbeck.com</b><br/>7:25<br/><b>base</b> 36:22 93:1<br/>95:20 112:22<br/><b>based</b> 29:3,4 34:1<br/>34:2 76:19 91:12<br/>92:18 93:17 116:8<br/>116:23 126:3<br/>173:24 182:22<br/>186:1 196:4,6<br/>204:24 225:14<br/>239:23 267:9<br/>316:9,11 329:6<br/>331:5 334:23<br/>338:9 344:4,23<br/>345:13 354:19<br/>356:8<br/><b>basically</b> 147:17<br/>149:4 150:10<br/><b>basing</b> 344:22<br/>345:12<br/><b>basis</b> 69:22 95:25<br/>133:8 155:3<br/>189:25 203:13<br/>219:4 225:16<br/>226:8,21 230:18<br/>235:5 258:1,2,25<br/>259:3 321:11,14<br/>323:22<br/><b>bates</b> 13:23 14:14<br/>16:11 18:7,11,15</p> | <p>18:19,23 19:7,11<br/>19:15,19,23 20:7<br/>20:11,14,19<br/>294:22 299:10<br/><b>batting</b> 47:6<br/><b>baylen</b> 4:19<br/><b>beach</b> 198:4<br/><b>bear</b> 58:2 180:14<br/>184:20<br/><b>bears</b> 153:4<br/><b>beck</b> 7:20 161:11<br/>163:10,13<br/><b>becker</b> 11:20<br/><b>began</b> 330:10<br/><b>beginning</b> 13:23<br/>72:3 90:17 144:2<br/>263:8 303:16<br/>317:2 321:18<br/>335:21<br/><b>begins</b> 23:18<br/>303:10 339:1<br/>357:21 359:6<br/><b>behalf</b> 13:19 56:7<br/>57:12 93:25<br/>127:12,21 130:20<br/>143:17 214:23<br/>221:23 222:9<br/>226:4 245:14<br/><b>behrens</b> 11:6<br/><b>beisell</b> 5:15<br/><b>belief</b> 167:8<br/><b>believe</b> 28:13,14<br/>29:3 30:15 37:12<br/>39:4,4,7 41:24<br/>54:6 58:9 66:19<br/>69:25 70:21 87:15<br/>90:23 93:7 102:12<br/>102:18,20 104:6,6<br/>112:18,19 127:14<br/>127:22 130:8<br/>132:22 139:11</p> |
|--|---|---|---|

|  |   |   |   |
|--|---|---|---|
| 142:12 147:8<br>160:19 163:1<br>164:14 165:25<br>170:8 180:17<br>183:24 187:8<br>191:12 199:9<br>203:9 204:11<br>217:20 223:21<br>224:24 229:17<br>230:17 233:14<br>235:16 238:16<br>254:14 258:15,24<br>260:1 261:24<br>268:6 271:4 272:8<br>276:5 281:9<br>282:20 292:3<br>293:8,14 294:24<br>295:16 298:23<br>299:13 300:16<br>307:25 323:15<br>324:1,23 326:4,23<br>327:8 329:11<br>330:19 331:11<br>336:5 345:23<br>348:12 351:14,15<br><b>believes</b> 84:10<br><b>bell</b> 127:18<br><b>bellevue</b> 172:13,25<br><b>bench</b> 16:6<br><b>benefit</b> 91:25<br><b>bernard</b> 6:7<br><b>berris</b> 2:17<br><b>best</b> 92:11 118:3<br>242:12 369:13<br><b>better</b> 56:16 74:19<br>82:5 98:25 101:8<br>129:23 158:1<br>177:4,5 270:5<br>336:14 364:4<br><b>beyond</b> 29:1<br>364:21 | <b>big</b> 107:20 162:20<br>273:21<br><b>bigger</b> 185:22<br>188:25<br><b>biggest</b> 97:4 176:9<br>177:11 180:9<br>185:15,21 186:3<br>188:21 196:2<br>206:16<br><b>bill</b> 16:9 59:3,10<br>99:11,21,22<br><b>billed</b> 58:21 242:8<br><b>billing</b> 15:21 242:7<br><b>billings</b> 58:18<br>241:9,14<br><b>billion</b> 33:2,17<br><b>bills</b> 241:18<br><b>binder</b> 31:14<br>272:24 273:1,8<br>285:23 289:17<br>294:9 295:22<br><b>binders</b> 272:21,22<br>283:20 285:9<br>289:19,24<br><b>birklin</b> 18:10,14<br>18:18,22 19:6,10<br>19:14,18,22 20:6<br>20:10 286:23<br>290:9,20<br><b>birmingham</b> 23:3<br><b>bit</b> 34:22 35:13<br>53:7 71:8 136:2<br>165:15 172:13<br>176:5 177:8<br>187:21 189:9<br>211:19 222:13<br>246:9 249:20<br>254:17 257:6<br>268:23 273:25<br>282:23 283:7<br>364:14 | <b>block</b> 291:15<br><b>blucero</b> 18:6<br><b>board</b> 42:25 43:7<br>127:2 156:20<br>157:3 158:16<br>159:15 310:17<br>311:2,10,20 317:3<br>356:21<br><b>boards</b> 159:5<br><b>bob</b> 11:6<br><b>bockius</b> 8:11,19<br>245:14<br><b>body</b> 299:4<br><b>bolts</b> 266:25 270:8<br><b>bonasso</b> 5:7<br><b>boots</b> 7:16<br><b>border</b> 63:8 64:14<br><b>born</b> 62:24<br><b>boshers</b> 201:7,11<br>201:14,19 204:15<br><b>boss</b> 130:10<br><b>bosses</b> 130:10<br><b>bottle</b> 210:15<br>321:17,21,22<br>327:17 329:8<br><b>bottles</b> 146:20<br>274:17 321:13<br>328:9,19,25<br><b>bottom</b> 181:22<br>190:18 192:2<br>290:7,16 294:15<br>294:16,20 298:7<br>299:18 351:17<br>352:1<br><b>boulevard</b> 3:8<br>9:18 10:8,16<br>12:19<br><b>bounce</b> 367:4<br><b>bound</b> 81:17<br><b>bounds</b> 314:13 | <b>box</b> 161:5,7 163:7<br>163:9,13 255:25<br>273:6 362:10,10<br>362:10,16<br><b>boxes</b> 163:16<br>362:21 363:7<br><b>break</b> 80:7 82:21<br>83:1 160:4,9<br>164:2 245:4<br>254:16 303:8<br>304:22 305:9<br>338:24 357:19<br>359:4 365:9<br><b>breaking</b> 155:24<br>232:12 358:12,13<br><b>breannan</b> 213:10<br><b>brennan</b> 17:17<br>212:11,15 214:22<br>217:20 218:21<br>219:6 223:14,19<br>226:3,11<br><b>brennan's</b> 213:8<br>214:6,18 215:11<br>218:20 219:16,22<br>221:2 225:13<br><b>bridgeside</b> 10:8,16<br><b>briefing</b> 301:21<br>302:14 312:2,21<br>312:23 313:1,6,11<br>342:19 347:17,21<br><b>briefings</b> 301:9,12<br>301:14,15 302:21<br>312:10,18 342:24<br>343:5 347:13<br><b>briefly</b> 316:21<br><b>bring</b> 78:8<br><b>broad</b> 37:21 44:14<br>89:24 96:9 156:16<br>158:11 178:8<br>336:9 |
|--|---|---|---|

[broadened - centers]

Page 10

|   |  |   |   |
|---|--|---|---|
| <b>broadened</b> 198:19<br><b>broader</b> 92:23,25<br>135:4<br><b>broadly</b> 171:1<br>192:23<br><b>brody</b> 11:19<br><b>brothers</b> 197:20<br>203:10,14,23<br><b>brought</b> 64:11<br>65:23 100:19<br>279:14,17 339:12<br>350:22<br><b>broward</b> 198:4<br><b>brunner</b> 9:5<br><b>bubble</b> 285:14,15<br><b>buchanan</b> 4:18<br><b>budd</b> 12:18<br><b>buddy</b> 141:1,4<br><b>bunch</b> 124:4<br>308:19<br><b>business</b> 25:25<br>26:2 68:7,9 112:9<br>125:5 141:24<br>142:10,16,18,22<br>143:6 148:13<br>248:5,7 345:8<br>346:9<br><b>businesses</b> 25:22<br>26:14 193:14<br><b>busy</b> 144:4 249:22<br><b>buying</b> 355:21<br><b>bypassing</b> 334:8<br><b>byrne</b> 11:18 | <b>cabinet</b> 210:16<br><b>cabinets</b> 108:9<br><b>cadet</b> 199:21<br>200:22 204:15<br><b>calculation</b> 171:9<br><b>california</b> 12:21<br><b>call</b> 26:22 48:8<br>68:24 72:18 93:9<br>93:20 105:15<br>107:12 137:13<br>157:25 198:8<br>278:7<br><b>called</b> 47:18 61:10<br>66:25 199:13<br>233:4,10,16<br>279:18 334:7<br><b>camera</b> 24:20<br>304:7<br><b>cancer</b> 128:22<br>341:16,25<br><b>capacity</b> 61:24<br>65:22<br><b>capitol</b> 5:8<br><b>capture</b> 308:22<br><b>cardinal</b> 26:15<br>346:9,9<br><b>care</b> 56:4 124:13<br>172:11<br><b>career</b> 62:5,10,15<br>125:24 129:7,23<br>142:4,13<br><b>careful</b> 217:21<br>356:16<br><b>carella</b> 11:18<br><b>carellabyrne.com</b><br>11:23,24<br><b>carmen</b> 307:2<br><b>carolina</b> 10:9,17<br><b>carry</b> 60:18<br>337:13,24 | <b>case</b> 1:6 25:10<br>26:12 28:6,9,10,16<br>28:17 29:6 30:3,4<br>30:8,16 31:7 33:1<br>33:10,13,14 37:9<br>39:14 41:13 45:10<br>48:11 50:12 51:13<br>55:9 57:23 58:12<br>58:16,16,17 65:12<br>65:13,13,17,17<br>71:2 74:7 83:21<br>87:16 104:13,20<br>105:3 110:16<br>111:5 124:10<br>131:6,25 134:22<br>138:12 148:1<br>150:8 156:19<br>164:7 166:22<br>167:7,15 174:13<br>178:11 179:6,14<br>179:16 182:12,15<br>182:19,22 183:8<br>184:2,9 191:4<br>197:22 203:18,20<br>204:25 209:24<br>211:12 212:11<br>222:11,23 223:9<br>224:20 225:7<br>227:17 230:1<br>234:1 241:2 246:4<br>248:10,13 250:10<br>250:23 260:8,17<br>260:22 267:24<br>280:18,25 281:4<br>306:25 309:21<br>310:3,7 337:5<br>339:9 357:2,5,8,9<br>370:6 371:3 372:3<br><b>cases</b> 1:12 24:8<br>27:25 28:2 30:19<br>30:25 40:18 44:12 | 45:8 46:13 48:1<br>58:20,21 65:12,24<br>65:25 66:4 80:24<br>130:21 169:19<br>178:17 355:8,20<br>356:4,13<br><b>cash</b> 124:1 132:13<br>132:17<br><b>catchall</b> 309:15<br><b>catizone</b> 307:2<br><b>caucus</b> 366:24<br><b>cause</b> 23:11 66:5<br>78:20 107:5<br>125:19 137:12<br>155:12 158:2<br>369:18<br><b>caused</b> 153:21<br><b>caution</b> 73:24<br><b>cautious</b> 75:6<br>76:10 130:4<br>154:13 193:1<br><b>caveat</b> 30:23 58:4<br>196:13<br><b>ccr</b> 369:24<br><b>ceased</b> 229:11<br>266:21<br><b>cecchi</b> 11:18<br><b>center</b> 8:6,8<br>185:22 186:3,10<br>187:5,10,15 188:4<br>188:20 195:21<br>196:17 213:15<br>227:12 231:14<br>246:10 248:2<br>287:6 291:8 297:6<br>297:19 323:13<br>347:25<br><b>centers</b> 217:1<br>218:23 221:25<br>223:19 224:19<br>225:20 226:7 |
| <b>c</b> 2:1 3:1 4:1 5:1<br>6:1 7:1 8:1 9:1<br>10:1 11:1 116:13<br>117:5,13,23<br>258:13 369:1,1<br><b>ca</b> 370:25  |  |   |   |

## [centers - clinic]

Page 11

|   |   |   |  |
|---|---|---|--|
| 227:3,19 237:4<br>246:11,22 247:19<br>248:23 249:16<br>256:10 257:8,9<br>266:21 286:24<br>287:1 309:25<br>310:5<br><b>centre</b> 6:12 12:10<br><b>certain</b> 37:23,24<br>40:2,19,25 44:13<br>44:18 46:20 48:8<br>68:16 77:23 82:11<br>122:21,22 135:14<br>135:15,16,17<br>137:20 179:19<br>216:18 228:4<br>275:6 280:9<br>293:25 326:3,3<br>333:5 349:7<br>353:15,15<br><b>certainly</b> 33:16<br>44:5 57:6 68:13<br>137:11 298:21<br><b>certificate</b> 372:11<br><b>certification</b> 371:1<br>372:1<br><b>certified</b> 1:23 22:6<br>23:1 369:25<br><b>certify</b> 23:5 369:7<br>369:15<br><b>cfa</b> 14:7,10<br><b>cfr</b> 258:14 265:6<br>266:11,13<br><b>chagrin</b> 9:18<br><b>chain</b> 25:20 34:21<br>35:1,2,18,20 103:9<br>148:12 254:9,9<br>258:21,22 290:7<br><b>chains</b> 35:13<br><b>chance</b> 262:11<br>298:2 | <b>change</b> 61:15<br>112:23 154:11<br>162:22 173:19<br>225:16,20 322:13<br>370:13,14 372:8<br>373:3<br><b>changed</b> 125:23<br><b>changes</b> 106:19<br>120:3 370:12<br>371:7 372:7,9<br><b>changing</b> 333:15<br><b>channels</b> 200:7<br><b>characteristics</b><br>269:20<br><b>characterize</b> 70:9<br>107:3 122:12<br>131:2 141:4<br><b>charleston</b> 5:9<br><b>chart</b> 104:23<br>114:20 120:11,16<br>121:8,19 122:2<br>123:2,3 133:6<br>136:22,25 137:6<br>137:21 139:16<br>151:13 152:25<br>153:16 154:14,20<br>154:25 164:14<br>165:11 166:24<br>169:21 170:6,9,10<br>171:16 172:22<br>176:6 185:9<br>189:15 195:19<br>232:5,14,18 233:1<br>255:25 268:12<br>313:25 314:3<br><b>charting</b> 318:19<br><b>charts</b> 104:24<br>105:9,12,19,23<br>106:2,13 115:16<br>125:3 139:17,19<br>151:3 155:9 | 162:14 169:6,18<br>183:23 184:20<br>186:2,19 254:22<br>254:23 255:11<br>315:5 316:21<br>318:9 330:17,18<br>330:19 331:3<br><b>chase</b> 49:18<br>102:15 214:5<br>297:8<br><b>check</b> 71:11,25<br>72:9 146:19 147:3<br>275:1,22 280:22<br>282:15 298:24<br>350:4,10,13,19<br>351:2,3 361:22<br>362:16 363:3,15<br>364:5<br><b>checked</b> 203:3<br><b>chemical</b> 232:20<br><b>chicago</b> 5:19 7:23<br><b>chief</b> 212:16<br><b>chill</b> 365:10<br><b>choose</b> 305:19<br><b>choosing</b> 220:9<br><b>christmas</b> 285:13<br><b>circles</b> 265:12<br><b>circumstances</b><br>79:21 296:20<br>326:4 356:14<br><b>citation</b> 271:2<br>300:1,11<br><b>cite</b> 43:15 223:24<br>232:21 234:4<br>271:3 298:21<br><b>cited</b> 191:2 202:5<br>224:4,8,24 227:6<br>236:11 237:16<br>238:15 300:19<br>308:23 313:13<br>329:10,11 333:17 | 334:2<br><b>cites</b> 330:12<br><b>citing</b> 258:11<br><b>city</b> 63:18 145:24<br><b>civil</b> 23:6 79:3<br>355:5,14 371:5<br>372:5<br><b>claim</b> 70:5 100:14<br>109:11 332:2<br><b>claims</b> 247:9<br><b>claire</b> 17:16<br>212:11<br><b>clarification</b> 45:12<br>125:13 134:8,25<br>137:15 152:5<br>182:13 189:5<br>196:5 214:24<br>237:22 256:17<br>261:7 323:2<br>336:12 345:1<br><b>clarify</b> 213:1<br>215:9 224:8<br>225:18 309:6<br><b>clarifying</b> 101:1<br>154:19 155:22<br><b>clear</b> 33:21 78:22<br>92:5 100:23<br>116:21 251:21<br>271:18 306:3<br><b>clearly</b> 80:1<br><b>cleveland</b> 2:20<br>9:19 370:2<br><b>click</b> 168:3<br><b>cliff</b> 305:2<br><b>clinic</b> 128:22<br>193:12,16 198:10<br>198:19 203:5,6,11<br>203:15 204:8,21<br>205:7,18 206:15<br>206:23 208:16,21 |
|---|---|---|--|

[clinics - comprised]

Page 12

|   |  |  |  |
|---|--|--|--|
| <b>clinics</b> 192:9,17<br>193:5,6,6 198:7,13<br>198:22 199:13<br>203:4 209:2<br><b>clock</b> 29:12<br><b>close</b> 107:12 126:2<br>353:20 367:11<br><b>closed</b> 43:4,6<br>76:21 203:12<br>268:14<br><b>closely</b> 67:23<br><b>closer</b> 74:18<br>121:11 126:20<br><b>closing</b> 97:4,5<br><b>closure</b> 97:9<br><b>closures</b> 98:2<br><b>coaching</b> 29:11<br>236:14,17,19<br><b>coast</b> 199:15<br><b>coconspirator</b><br>199:22<br><b>code</b> 94:6 216:20<br>217:6 259:2<br>263:19,22 280:6<br><b>cohen</b> 9:15,17<br>118:21,24,25<br>119:9 262:16,20<br>263:5 364:12,23<br>366:2,14,18 367:1<br>367:6,8 368:1,4<br><b>collaboration</b><br>351:9<br><b>colleagues</b> 36:2,11<br>37:4 47:19 160:16<br><b>collected</b> 147:15<br><b>collectively</b> 136:17<br><b>colosimo</b> 74:4<br><b>column</b> 89:23<br>170:14<br><b>combination</b><br>354:12 | <b>combined</b> 202:11<br>205:20<br><b>come</b> 49:11 56:23<br>61:23 110:14<br>158:5 170:24<br>173:8 174:19<br>195:17 220:23<br>231:24 283:13<br>310:22 330:8<br>358:21 365:10<br>366:11 367:21<br><b>comes</b> 49:7 195:14<br>195:16 262:21<br>358:7<br><b>comfort</b> 82:21<br><b>comfortable</b> 79:17<br>275:25<br><b>coming</b> 82:6 92:12<br>92:21 94:12 95:10<br>95:12 96:3 100:20<br>143:16 175:4<br>325:19 360:10<br>364:13<br><b>commenced</b><br>336:17<br><b>commencing</b> 23:9<br><b>comment</b> 28:25<br>33:6 36:19 111:25<br>325:5 336:16<br>347:14<br><b>commented</b> 94:15<br><b>comments</b> 324:24<br><b>commission</b><br>371:19 372:25<br>373:25<br><b>commissioner</b><br>22:5 23:5 369:23<br><b>commit</b> 366:3<br><b>committed</b> 267:11<br><b>common</b> 128:13<br>145:16 | <b>communications</b><br>322:20<br><b>companies</b> 25:21<br>27:2 258:20<br>340:12<br><b>company</b> 6:5 12:5<br>47:21,21 51:21,22<br>109:23 137:9,23<br>148:5 212:24<br>214:12 215:15<br>257:3 261:4,8<br>270:21 278:25<br>279:17 282:7<br>302:12 325:2<br>348:16 349:11<br><b>compare</b> 106:23<br>115:19 171:4<br><b>compared</b> 123:25<br>135:4 153:4 156:5<br>170:22 176:9<br><b>comparing</b> 52:17<br>106:18 136:13<br><b>comparison</b> 14:12<br>15:14 53:1 107:14<br>114:24 115:9<br>118:15 119:11<br>120:1,2 123:9<br>156:4 172:3<br>196:16 202:7<br>205:23 234:11<br><b>competitor</b> 97:4<br><b>compilation</b> 86:18<br><b>complaining</b> 112:7<br><b>complaint</b> 299:23<br><b>complete</b> 39:23<br>261:8 359:10<br><b>completed</b> 40:15<br>75:12 191:10<br>370:15<br><b>completely</b> 148:9<br>149:23 165:17 | 261:10<br><b>completion</b> 38:22<br><b>complex</b> 35:14<br>80:5 96:11 97:15<br><b>compliance</b> 13:16<br>64:22 65:5 68:24<br>69:2,7 70:11 71:4<br>76:3,3,14,15,17,20<br>77:1,9,24 79:18<br>83:20 85:7,16<br>87:8 88:15,23<br>89:1,3,7,10,13,15<br>89:18,19,24 90:1,5<br>90:9 100:20<br>110:18 143:20<br>158:16 211:24<br>257:24 274:8<br>276:9 279:10<br>281:23 282:6,8<br>284:22 326:13<br>336:10 337:17<br>338:2<br><b>complied</b> 48:20<br><b>complies</b> 68:7<br>71:18,20<br><b>complimentary</b><br>76:11<br><b>comply</b> 46:16<br>47:17 67:10,17,25<br>68:14 69:19,23,25<br>70:6 81:17,22<br>87:15 194:17<br>215:8<br><b>complying</b> 72:14<br>87:4 88:1 102:10<br>109:12 111:11<br>328:20<br><b>comprehensive</b><br>144:6<br><b>comprised</b> 61:21 |
|---|--|--|--|

|  |   |   |   |
|--|---|---|---|
| <b>computer</b> 177:1<br><b>concede</b> 260:11<br><b>concept</b> 265:25<br>268:24 270:25<br>301:9<br><b>conceptually</b><br>149:11<br><b>concern</b> 123:8,10<br>126:18 154:16<br>155:12 279:24<br><b>concerned</b> 125:22<br>126:16 132:5<br>252:9<br><b>concerning</b> 145:24<br>153:25 277:11<br><b>concerns</b> 125:19<br>154:6 327:24<br><b>concert</b> 109:8<br><b>conclude</b> 85:15<br>313:16 314:22<br><b>concluded</b> 46:15<br>47:14 69:18<br><b>concludes</b> 117:5<br><b>conclusion</b> 69:23<br>98:21 100:5 122:6<br>124:5 137:5<br>157:21,24 158:6<br>225:5 316:8<br><b>conclusions</b> 48:19<br>158:12 223:7<br><b>conduct</b> 41:13<br>45:9,25 46:9<br>60:13 66:16 70:11<br>79:22 99:1 101:24<br>104:6 108:18<br>109:6 110:5<br>138:24 141:24<br>153:3 154:18<br>159:7 175:1<br>207:11 208:15<br>231:1 235:20 | 253:20 260:13<br>265:6 280:16<br>281:13 282:2,6,16<br>284:25 336:8<br>337:8 352:7<br>356:10<br><b>conducted</b> 81:19<br>142:17 147:14<br>167:15,19 208:20<br>212:3 271:12,13<br>344:20 345:5<br>351:3<br><b>conducting</b> 73:3<br>75:8 83:6 178:16<br>345:8 346:8<br><b>conducts</b> 211:17<br>212:9<br><b>conference</b> 24:12<br>76:18 119:1<br>243:13<br><b>confident</b> 39:17<br>249:20 276:2<br>328:20,22 329:2<br>332:15 365:25<br><b>confidential</b> 1:17<br>13:25 14:24 15:12<br>15:18 16:13,17<br>18:8,12,16,20,24<br>19:8,12,16,20,24<br>20:8,12,16,21 21:9<br>21:12 60:20 235:7<br>235:11 294:17<br><b>confirm</b> 57:24<br>71:2<br><b>confirmation</b><br>97:21 362:19<br><b>confirmed</b> 350:24<br><b>conflict</b> 225:13<br><b>confused</b> 294:4<br>328:13,14 | <b>confusion</b> 305:25<br>358:7<br><b>connect</b> 240:13<br>284:17<br><b>connecting</b> 175:12<br><b>connection</b> 138:11<br>306:23 341:1<br><b>conservative</b> 59:7<br><b>conservatively</b><br>58:5<br><b>consider</b> 33:16<br>122:23 192:24<br>222:21 278:16<br>279:19,22 335:1<br>336:24 337:16<br>338:4<br><b>considerably</b><br>340:13<br><b>consideration</b> 49:7<br>96:18 98:1 112:12<br>223:3<br><b>considered</b> 142:18<br>222:9 275:17,21<br>292:2 298:17<br>299:5,6 337:20<br>354:3<br><b>consistency</b><br>119:15<br><b>consistent</b> 117:17<br>167:6 219:9<br>318:12 321:11,13<br><b>consistently</b><br>302:16<br><b>consortium</b> 93:24<br><b>conspiracy</b> 99:19<br>138:15<br><b>construct</b> 269:5<br>270:8<br><b>consultant</b> 10:21<br>55:16 56:1 165:19 | <b>consultants</b><br>120:10 133:15<br>134:14 147:9<br>150:7<br><b>consulting</b> 10:22<br>53:7 268:12<br><b>consults</b> 93:19<br><b>contact</b> 142:15<br>230:23<br><b>contacted</b> 356:20<br><b>contacting</b> 333:3<br><b>contain</b> 38:20<br>129:5<br><b>contained</b> 42:7,10<br>43:14 52:5 69:16<br>80:2 101:22<br>108:20 113:6<br>168:24 232:24<br>258:14<br><b>contains</b> 1:17<br><b>contemporaneous</b><br>296:19<br><b>content</b> 293:24<br>298:2 308:17<br>350:25<br><b>context</b> 219:19<br>220:4,14,25<br><b>continuation</b><br>340:20 366:21<br><b>continue</b> 230:8<br>364:25 365:2<br><b>continued</b> 104:4<br><b>continues</b> 300:6<br><b>continuing</b> 3:1,4<br>4:1,4 5:1 6:1 7:1<br>8:1 9:1 10:1,4<br>11:1,4 12:2 14:2<br>15:2 16:2 17:2<br>19:2 20:2 364:16<br><b>contracts</b> 126:9 |
|--|---|---|---|

|                                     |                                      |                         |                   |
|-------------------------------------|--------------------------------------|-------------------------|-------------------|
| <b>contribute</b> 108:22<br>116:15  | 122:4 124:19,21<br>124:24 125:1,8,20 | <b>corporation</b> 8:7  | 108:6,7,11,13,19  |
| <b>contributed</b><br>107:15 117:10 | 125:21,25 126:5                      | <b>correct</b> 25:18,24 | 108:21,25 109:7   |
| 118:8 159:13                        | 126:17,22 131:12                     | 26:5,10,14,16,21        | 109:20 110:19     |
| 209:3,7                             | 167:13 175:3                         | 27:3,25 28:3,4,7        | 111:22 112:10,17  |
| <b>contributing</b>                 | 179:1 254:14                         | 28:11 30:5,8,13,14      | 113:5 114:9 115:6 |
| 111:16 178:5                        | 258:8,23 259:4,15                    | 30:17 32:10,15,16       | 115:10,25 116:17  |
| <b>contribution</b>                 | 260:2 317:8,21                       | 33:4,10 34:3            | 119:16,18 120:14  |
| 107:21 108:17                       | 318:3,8 335:11                       | 40:20 41:16,17,24       | 121:6,17 122:5,10 |
| 175:14,18,21                        | 344:8                                | 43:13,21 44:3,8         | 122:16,18,19,25   |
| <b>contributor</b>                  | <b>conversation</b> 76:8             | 45:1,4,10,11,18         | 124:10,15,21,22   |
| 179:24                              | 76:22 85:12 169:9                    | 46:10,11,17 47:12       | 125:3,9 128:24    |
| <b>contributors</b>                 | 243:18,22 244:1                      | 48:13,21 49:22          | 132:1,13 133:14   |
| 179:7                               | 306:19                               | 50:2,3,17,21,22         | 137:3 138:12,16   |
| <b>control</b> 14:20                | <b>conversations</b>                 | 51:4,23 52:4,14         | 139:6,22 140:10   |
| 212:16,17 313:20                    | 144:22,25 243:21                     | 53:4,8,13 56:2,3        | 140:14,16 141:22  |
| 318:15 335:1                        | <b>conversely</b> 149:15             | 58:17,19,21 59:14       | 143:24 145:5,8    |
| 353:7                               | <b>convicted</b> 203:24              | 59:18,19,23 60:4        | 146:6,7,10,14     |
| <b>controlled</b> 13:18             | 204:1,3                              | 60:15 61:1,13           | 147:4,20 148:5    |
| 64:24 67:2,11,16                    | <b>conviction</b> 98:18              | 62:19,20 63:3,12        | 149:10 151:12,17  |
| 69:11 86:11 87:13                   | 356:7                                | 64:8,13 66:2,12,13      | 155:15 156:6      |
| 91:19 94:12 97:7                    | <b>coordination</b>                  | 66:17,18,21 67:4        | 159:24 162:7,8,16 |
| 123:25 125:6                        | 259:6,8                              | 67:11,18 68:1,14        | 162:21 164:22,23  |
| 126:4 128:15,18                     | <b>coordinator</b>                   | 68:20 69:4,13,20        | 165:1,2,5,6 166:8 |
| 132:18 133:7                        | 286:23                               | 69:21 70:23 71:13       | 166:9,14,16,18,20 |
| 161:24 177:22                       | <b>copies</b> 220:8                  | 72:1,25 73:6,20         | 166:22,23 167:15  |
| 192:4 194:7,10                      | <b>copy</b> 188:14                   | 75:14,15,18,23          | 167:17,19,20      |
| 199:3 200:4                         | 220:12,15 221:3,4                    | 76:4,15 77:5            | 169:25 170:5,22   |
| 229:17 233:17,25                    | 226:12 300:21                        | 80:22 83:11 85:3        | 171:23 172:8,18   |
| 234:12 247:22                       | 308:2,5                              | 86:25 87:4,16,17        | 172:19 173:2,6,14 |
| 258:9 261:20                        | <b>corner</b> 168:16                 | 87:23 88:4,7,12,13      | 173:16 174:4,14   |
| 275:14 310:2                        | 294:20                               | 90:11,16,21 91:4        | 175:8,10,15,23    |
| 325:24 326:16                       | <b>corp</b> 8:5                      | 91:15,19 92:4,21        | 176:3 178:13      |
| 327:1                               | <b>corporate</b> 97:1                | 93:6 94:5,12 96:4       | 180:7,13,23 181:6 |
| <b>controlling</b> 266:7            | 103:15 148:2                         | 96:20,21 97:13          | 182:12,15 183:5   |
| <b>controls</b> 13:17               | 257:24 259:11,20                     | 98:5,10,15,19           | 183:17 184:2,9,10 |
| 69:10 70:8,15                       | 264:11 281:20                        | 99:15,19,20 100:2       | 184:15 187:6,25   |
| 71:1 87:12,20                       | 284:20 285:1                         | 100:11 101:16,17        | 188:6,7,11,24     |
| 88:2 102:19 104:7                   | 321:6                                | 102:6 103:2,3           | 190:20 195:17     |
| 109:14 110:13                       | <b>corporately</b> 254:7             | 105:20,23 106:2,3       | 199:6 201:13,16   |
|                                     |                                      | 106:6,7,9,21,22         | 201:17 205:16     |
|                                     |                                      | 107:9,22,23 108:2       | 207:7 208:12      |

[correct - courthouse]

Page 15

|                    |                           |                        |                          |
|--------------------|---------------------------|------------------------|--------------------------|
| 209:4 210:9        | 334:23 335:13,16          | <b>count</b> 180:16    | 184:1,8,14,18            |
| 211:22 222:1,2,6,7 | 335:17,21,25              | 220:23 367:25          | 185:11,15,21             |
| 223:1,9 226:8,24   | 336:4,8,18,22             | <b>countersued</b>     | 195:21 196:3,12          |
| 227:5,21 228:22    | 337:11,20 338:5           | 337:22                 | 206:10 207:7,16          |
| 229:6 231:6 232:1  | 339:20 340:7              | <b>counties</b> 13:20  | 209:15 228:13,25         |
| 232:22 233:11      | 343:12 345:15,21          | 14:14,22 15:10         | 229:5 239:4,15           |
| 234:15 236:1       | 348:11,12 349:18          | 16:17 25:2 41:14       | 242:15 243:7,19          |
| 237:1,6,8 238:19   | 349:20 353:3              | 42:5 63:7,11,13,16     | 244:18 254:24            |
| 239:9,12,16        | 354:3,18 355:1,2          | 64:6,6 107:16,22       | 255:25 268:3,5,18        |
| 240:15 243:17      | 362:6 368:2               | 108:1,5,11,23          | 268:19 272:6,7,15        |
| 245:15,16 246:22   | 369:12                    | 120:4 121:5,16,18      | 272:17 281:19            |
| 246:23 247:15,21   | <b>corrected</b> 77:15    | 133:9 135:2            | 311:18,22 314:1          |
| 248:14,25 249:7,8  | <b>correction</b> 77:13   | 136:14 146:5           | 341:11 343:15            |
| 251:3,14 252:14    | <b>corrections</b> 370:12 | 155:2 156:22           | 352:16 353:2,8,12        |
| 252:16,19,22       | 372:17                    | 157:19 159:14          | 353:16 354:25            |
| 253:12 254:5,6     | <b>corrective</b> 77:16   | 174:21 183:21          | 356:21 369:5             |
| 255:3,4,19 256:21  | 78:1                      | 186:4 198:5            | 371:10 372:15            |
| 256:22 257:12,15   | <b>correctly</b> 192:13   | 206:17 267:6,15        | <b>couple</b> 53:15      |
| 257:16,22 258:5    | 194:3 253:8 256:7         | 267:19,19,23           | 55:18 65:11              |
| 258:17 262:3       | 265:19 299:11             | 268:7,10 272:2         | 101:18 139:16            |
| 264:12 269:16      | <b>correlation</b> 123:2  | 281:5,16 318:19        | 144:4,22 145:23          |
| 279:21 284:14      | <b>correspond</b>         | 335:3 336:4            | 149:25 152:6             |
| 286:12,13 293:14   | 330:22 331:3              | 354:13                 | 204:16 212:7             |
| 293:25 300:2,7,15  | <b>correspondence</b>     | <b>country</b> 92:25   | 235:8 238:11             |
| 300:18 301:9,22    | 293:15                    | 94:5 107:5 169:7       | 243:15 246:3,5           |
| 302:5,7 303:1      | <b>corresponding</b>      | 183:5 249:22           | 266:24 268:15            |
| 305:13 306:14      | 110:12 143:11             | 318:20                 | 339:10 360:16            |
| 307:9 308:19       | 158:18 255:25             | <b>country's</b> 92:13 | <b>course</b> 60:22      |
| 309:21 310:3,4,8,9 | 261:21,25 263:13          | <b>county</b> 15:18    | 66:12 81:24 117:3        |
| 310:13,14,17,21    | 264:9,24,25 265:2         | 16:25 17:7 25:2,3      | 200:24 296:5             |
| 311:4,7,12,18,22   | 265:16,24 266:1           | 50:10 51:20 63:17      | 308:6 353:13             |
| 312:3,7,11 318:15  | 266:15                    | 63:18 97:3 105:13      | <b>court</b> 1:1 23:7,22 |
| 318:16 319:3,4,7   | <b>corresponds</b> 350:5  | 107:6,7 115:3          | 29:9 30:12 66:7          |
| 319:11,18,23,25    | <b>costs</b> 33:2         | 117:11 118:8           | 71:3 197:2 304:22        |
| 323:14,23 324:17   | <b>counsel</b> 22:4,9,11  | 119:12 136:5           | 308:16 338:18            |
| 324:18 325:12      | 23:8,21 24:18             | 151:4 168:17           | 362:2 371:7              |
| 326:2,20 327:5,12  | 127:19 136:12             | 169:16,23 170:4        | <b>court's</b> 41:5      |
| 327:14 328:9,25    | 235:12 238:2              | 171:11 172:2,6         | 359:22                   |
| 331:16,24 332:5    | 304:20 361:8              | 173:5 174:14           | <b>courtesy</b> 160:15   |
| 332:12,24 333:17   | 369:16                    | 175:15 179:8,25        | <b>courthouse</b> 7:21   |
| 333:22 334:2,22    |                           | 180:17 183:17          |                          |

[courts - dea]

Page 16

|   |   |   |  |
|---|---|---|--|
| <b>courts</b> 28:7<br><b>cover</b> 63:6 64:3,5<br>296:10<br><b>coverage</b> 63:5<br><b>covered</b> 110:3<br>309:16 310:12<br><b>craig</b> 14:6,9<br>306:19 359:19<br>361:19<br><b>create</b> 99:3 142:8<br>305:19<br><b>created</b> 98:24<br>99:13 100:7 169:5<br>169:6 305:1<br><b>creation</b> 98:18<br><b>crimes</b> 203:24<br><b>criminal</b> 79:4,8,12<br>98:17 99:18 198:3<br>199:11 355:25<br><b>crisis</b> 47:12 107:15<br>107:21 116:16<br>117:11 118:8<br>159:14 173:11<br>174:3,13,21<br>175:14 178:1<br>179:7,24 184:14<br><b>criteria</b> 270:7<br><b>critical</b> 117:17<br><b>cross</b> 220:5 305:24<br>361:7 363:6 366:8<br><b>crowley</b> 141:2,5<br>141:19 142:6<br>143:11,25 145:2<br>147:22 148:6<br>149:5,16 152:5<br>239:8<br><b>crowley's</b> 143:18<br><b>crunched</b> 113:4<br><b>crux</b> 38:3<br><b>csa</b> 162:3 262:1<br>263:12,18 | <b>ct1</b> 54:19,20 340:5<br><b>ct3</b> 58:18 232:15<br>286:10 341:2,5<br><b>cumulative</b> 242:19<br><b>curb</b> 191:13<br><b>current</b> 65:3 67:4<br>275:11 276:11<br><b>currently</b> 71:19<br><b>cursor</b> 192:12<br><b>customer</b> 8:6<br>103:2,5,25 112:22<br>183:12 232:19<br>253:20 260:10<br>278:17,18 279:7<br>279:14,15,18,24<br>279:25 280:5<br><b>customer's</b> 260:9<br>260:14,14<br><b>customers</b> 26:13<br>27:3 157:7 161:20<br>178:18,19<br><b>cut</b> 45:21 49:18<br>51:22 115:13<br>151:25 214:5<br>262:14 282:24<br>321:12 328:8<br><b>cutoff</b> 62:14<br>131:18,19 133:25<br>151:12,17 152:3<br>152:24 153:14<br>346:14<br><b>cutting</b> 283:7<br>320:20<br><b>cuyahoga</b> 51:20<br>53:4 167:15<br><b>cvs</b> 7:4,4,5,5,6<br>21:6 25:16 42:17<br>50:16 93:10,24<br>94:16 164:15<br>165:10,10,12,22<br>166:1,8,11,18 | 167:8 339:9 340:9<br>340:14,19 341:11<br>341:12,15,24<br>343:7,10,15,17,20<br>343:25 345:25<br>347:20 348:10<br>349:14 352:11,15<br>353:1,8,11<br><b>cvs's</b> 164:25 340:2<br>343:12 344:3<br>347:24 354:11,24<br><b>cyclic</b> 67:3 71:10<br>72:10,17 73:13,18<br>75:13 83:6 211:21<br>214:14 215:3<br>249:15 250:6,11<br>250:13<br><b>cyclics</b> 250:5<br><b>cynthia</b> 199:21                                     | 252:5 331:5<br><b>database</b> 98:19<br>100:7 199:25<br>322:25 329:7,9,10<br>329:13,20<br><b>databases</b> 328:17<br><b>date</b> 23:5,16 99:24<br>197:10 228:23<br>243:11 252:5,8<br>274:24 284:8<br>322:8,17 331:4<br>370:8 371:3,9,19<br>372:3,13,25<br>373:20,25<br><b>dated</b> 51:13<br>141:20 274:9<br>296:16<br><b>dave</b> 11:15<br><b>david</b> 9:15,17,21<br>12:7 118:25<br>364:13,21 366:24<br><b>day</b> 5:17 83:8<br>109:17 110:16<br>117:5 160:17<br>163:6 180:16<br>204:5 230:5 237:4<br>237:5 244:4,7,9,11<br>244:12,23 262:19<br>303:23,23 371:16<br>372:22 373:22<br><b>days</b> 77:25 339:24<br>370:18<br><b>dc</b> 7:12 101:22<br>237:10<br><b>de</b> 3:17<br><b>dea</b> 14:13 30:22<br>34:9,18 35:21<br>36:2,10,12 37:4<br>46:17 47:17,18<br>48:21 53:8,18,21<br>55:15 56:1 59:13 |
|   |   | <b>d</b>  |  |
|   |   | <b>d</b> 6:6,7,8 8:5,7<br>116:13 117:6,13<br>117:23<br><b>d.c.</b> 246:12,13<br>275:13 297:14,19<br>325:6<br><b>dallas</b> 9:10<br><b>dan</b> 1:7<br><b>dangerous</b> 240:21<br><b>daniel</b> 2:15<br><b>data</b> 16:16 48:11<br>49:13,16,22 83:10<br>83:22 84:22,23<br>113:4 116:22<br>120:9 121:6<br>133:15 134:14<br>147:15 150:7,8,9<br>153:25 154:10,11<br>165:14,16 183:23<br>195:14,14 203:3<br>204:14,19 244:20 |  |

[dea - definitely]

Page 17

|   |  |   |  |
|---|--|---|--|
| 59:13,17,21 60:7,9<br>60:23 61:9,16<br>62:1,8,18 64:19<br>65:3,5,23 66:2,10<br>66:16,24 67:2,4,10<br>67:18,22,25 71:18<br>71:20 74:6 75:10<br>75:11,11,22 76:4<br>77:3,7,10 78:1<br>79:16,18,25 80:20<br>82:2,2,16 83:8,24<br>85:6,15,17 87:21<br>88:2,7 91:3,17<br>92:1,11 93:4,9,19<br>94:3,10,18 95:11<br>96:19 100:14<br>103:24 105:4<br>106:9,14,19<br>109:12 111:15<br>112:15 113:6,8,17<br>118:4 120:2,20<br>121:1,12 122:9<br>125:17,18 126:23<br>127:12,21,23<br>128:2 129:24<br>130:2,10,13<br>133:18 135:8<br>141:2,24 142:10<br>143:6 144:13<br>165:20 177:20<br>178:4,15 182:12<br>182:15 192:22<br>195:15,17 198:14<br>203:17 209:8<br>211:17 212:5,8,9<br>212:17,22 213:13<br>214:12,23 215:17<br>216:6 217:21,24<br>218:7,13 219:5<br>221:23 222:10<br>223:6 225:23 | 226:4,4,22 227:2<br>227:18 231:13,22<br>233:20,22 234:12<br>234:20 238:18,22<br>246:16,21 247:17<br>247:18,24 248:6,9<br>250:8,9,13,20<br>257:9,14 258:16<br>259:21 260:5,16<br>260:21 261:11<br>263:25 266:17<br>269:4,11 270:1,3,4<br>270:6 280:4 281:2<br>281:23 282:6<br>283:2,3 284:22<br>286:1,23 287:1<br>292:21 293:11,16<br>296:12 297:14<br>298:8,11 301:5<br>310:1,10 311:6,16<br>312:2,18,25<br>313:11 317:13<br>319:16 328:2<br>342:23 343:4<br>347:7,11,24 348:9<br>348:16,20,22<br>349:10 355:9<br><b>dea's</b> 86:11 92:18<br>100:11 113:2<br>204:19 211:24<br>215:16 217:13,14<br>218:21 219:7<br>223:17 224:17<br>225:5<br><b>deal</b> 13:24<br><b>deal</b> 163:23<br>278:24<br><b>dealing</b> 44:12<br>71:12<br><b>dealings</b> 36:18<br>159:5 260:13 | <b>dealt</b> 36:16 80:24<br>132:21 333:14<br><b>dear</b> 300:7,10,12<br>300:14,21 301:20<br>302:20 370:10<br><b>deborah</b> 297:8<br><b>december</b> 15:11<br>284:9 287:13<br>294:13 336:17<br><b>decide</b> 118:2 277:2<br>366:25<br><b>decided</b> 366:10<br><b>decides</b> 116:12<br><b>decision</b> 76:24<br>79:24 117:2<br><b>declaration</b> 15:5<br>138:4,6,9<br><b>declaratory</b><br>277:17<br><b>decline</b> 318:21,21<br>318:25<br><b>declines</b> 123:6<br>318:10<br><b>decrease</b> 105:14<br>105:15,17 120:12<br>121:3,15 317:3,7<br>317:19<br><b>decreased</b> 104:20<br><b>decreases</b> 120:19<br><b>deed</b> 371:14<br>372:20<br><b>deemed</b> 88:17<br>370:19<br><b>defective</b> 227:7<br><b>defendant</b> 5:4,13<br>9:4 13:11 14:1<br>15:1 16:1,20 17:1<br>18:1 19:1 20:1<br>21:1 34:6,15<br>35:18 36:2 41:15<br>43:20,25 44:7 | 45:9 46:8 108:24<br>174:7 199:21<br>305:23<br><b>defendant's</b> 43:10<br>68:24<br><b>defendants</b> 6:4 7:4<br>7:16 8:4 12:4 25:5<br>25:6,8,10,13 26:11<br>32:3 37:5 42:1,14<br>42:24 46:25 47:5<br>47:15 48:20 50:11<br>50:13 51:2 52:1,7<br>52:13 56:25 65:5<br>69:7,18 70:22<br>83:20 87:15 88:1<br>107:2 109:6,10<br>110:5,9 114:8<br>136:19,20 146:5<br>147:2 153:12,13<br>154:3 156:11<br>158:15 166:22<br>178:23 179:4,10<br>179:19 198:3<br>242:22 246:5<br>250:23 251:7<br>280:17 281:15<br>306:1 307:17<br>308:11 309:7,12<br>309:14 314:23<br>315:2 319:3<br>339:19 353:20<br>360:13,20 364:17<br>364:25 365:13,19<br><b>defense</b> 363:18<br><b>deferring</b> 227:12<br><b>deficient</b> 334:9<br><b>define</b> 280:4<br><b>definitely</b> 76:5<br>100:21 101:20<br>144:17 151:18<br>266:4 305:8 363:1 |
|---|--|---|--|

[definitely - different]

Page 18

|  |   |  |   |
|--|---|--|---|
| 363:14<br><b>definition</b> 89:9<br>91:3<br><b>definitive</b> 101:24<br>125:12,14 127:5<br>271:21 295:6<br>329:5 346:4<br><b>definitively</b><br>134:11 249:2<br>332:13<br><b>deleted</b> 144:9<br><b>deletes</b> 143:7<br><b>demand</b> 31:9<br>92:20,20 96:4<br>98:4 213:22 214:2<br>215:22<br><b>demanded</b> 213:18<br><b>demonstrates</b><br>298:9<br><b>demonstrating</b><br>304:9<br><b>department</b><br>370:22<br><b>depend</b> 79:21<br><b>dependent</b> 73:2,12<br>81:18<br><b>depending</b> 68:4,6<br>76:6 115:4,25<br>131:20,21 133:19<br>249:22 326:5<br>349:3<br><b>depends</b> 31:10<br>131:9<br><b>depict</b> 121:19<br><b>depo</b> 366:20<br><b>deponent</b> 13:4<br><b>deposed</b> 28:21<br>127:22 297:9<br><b>deposing</b> 361:19<br><b>deposition</b> 1:15<br>14:17 15:24 17:15 | 21:5 22:4,13<br>23:18 24:20 27:7<br>27:9 28:5,15<br>29:14,17 30:6,7,9<br>30:16 32:2 37:2<br>40:4,7,8,12,16,19<br>40:23,24,25 41:1,2<br>41:4 55:8,9 131:5<br>212:10 214:18<br>215:17 218:20<br>219:4,8,10,18<br>220:1,12,13,24<br>223:2,20 224:2,3,8<br>224:24 226:11,21<br>237:13,15 245:8<br>248:25 283:10<br>302:1,9 303:6,11<br>303:17 323:19<br>325:14 330:11<br>338:22 339:2<br>343:9 356:6<br>357:17,22 359:2,7<br>359:10,18 360:21<br>360:22,24 364:3<br>368:8,10 369:8,12<br>370:8,11 371:1,3<br>372:1,3<br><b>depositions</b> 32:5<br>38:9,11 39:20,21<br>39:22 40:2,11,13<br>40:17 48:25 49:15<br>55:3 157:13<br>158:21,25 220:11<br>238:7 302:17<br>328:5<br><b>deprived</b> 341:17<br>341:25<br><b>depth</b> 73:7 100:18<br>149:1 316:22<br><b>describe</b> 138:20<br>193:13 279:10 | 312:22,23<br><b>described</b> 44:19<br>81:9 82:17 198:22<br>209:3 250:23<br>266:12 301:16<br>312:5<br><b>describing</b> 199:25<br><b>description</b> 48:14<br>149:12 198:18<br>250:25 274:24<br><b>descriptions</b> 89:25<br><b>design</b> 90:18 99:4<br>110:23 112:21<br>269:13 326:8,10<br><b>designated</b> 1:17<br>21:12 28:22<br>235:11<br><b>designations</b> 21:9<br><b>designed</b> 113:12<br>319:13 344:14<br><b>designee</b> 17:16<br><b>desirable</b> 135:17<br><b>desire</b> 60:5 113:11<br><b>desk</b> 362:25 363:3<br>363:15<br><b>despite</b> 111:19<br><b>destroy</b> 363:10<br><b>destroyed</b> 143:4<br><b>detail</b> 71:7 80:13<br>82:17 136:2<br>171:13 187:4<br>236:25 237:2<br><b>detailed</b> 68:3<br>77:16 81:20 144:6<br>147:16<br><b>details</b> 91:24<br>186:9<br><b>determination</b><br>239:22<br><b>determinations</b><br>154:15 | <b>determine</b> 87:19<br>92:2,12 122:23<br>123:12 153:7,24<br>165:21<br><b>detroit</b> 2:18 3:10<br>24:13,13,14 34:18<br>35:21 44:23 61:7<br>61:17 62:18,20,23<br>62:25 63:1,6 64:3<br>77:6 141:10<br>143:16 144:23<br>145:13,24 148:7<br>152:17 218:15<br><b>developed</b> 191:11<br><b>dgilfillan</b> 11:23<br><b>dgoetz</b> 2:22<br><b>diaz</b> 358:2,5<br><b>dictate</b> 76:7<br><b>difference</b> 34:23<br>60:17 116:7,8<br>120:25 162:20<br>287:21<br><b>differences</b> 34:25<br>353:22<br><b>different</b> 34:7,16<br>35:7,8,13,19 36:1<br>37:3 73:15,16<br>78:13 79:2,9,9,13<br>84:16 89:23 92:6<br>124:5 125:18<br>136:13 148:9<br>161:25 165:16,18<br>171:4,5,9 222:21<br>227:17 229:22<br>230:8,13 233:7<br>238:6 242:10<br>248:7 257:6,7<br>258:7 305:25<br>318:10 319:13<br>326:23 335:15<br>342:17 349:11 |
|--|---|--|---|

## [different - distribution]

Page 19

|   |   |  |   |
|---|---|--|---|
| 353:17 363:8<br><b>differently</b> 280:22<br><b>difficult</b> 36:20<br>326:12<br><b>digging</b> 273:4<br><b>diligence</b> 70:12,13<br>70:19 71:4 97:19<br>97:22 109:24<br>110:24 149:9,12<br>149:21 153:7<br>222:1,5 223:8<br>225:6,24 226:5,17<br>226:23 227:4,9,11<br>227:20 228:3<br>229:9,23 230:2,13<br>239:24 271:12,13<br>271:16,17 272:16<br>276:20 278:9,14<br>278:16,18 280:3<br>298:9 313:18<br>320:22 323:1<br>344:19,22 345:5,6<br>345:12 346:18,22<br>352:19<br><b>dinner</b> 365:9<br><b>direct</b> 29:7 36:18<br>63:24 113:25<br>132:21 193:25<br>194:6 206:19<br>210:24 245:19<br>260:13 284:5<br>290:14 295:21<br>302:18,19 303:1<br>351:14 360:6,9<br><b>directed</b> 40:18<br>114:4 158:9 252:4<br>269:17<br><b>direction</b> 193:9<br><b>directional</b> 119:2<br><b>directly</b> 192:18<br>193:15 194:10,15 | 261:2 263:21<br>313:25 334:6,22<br><b>director</b> 127:2<br><b>disagree</b> 81:15<br>95:22 96:15 109:2<br>129:5 178:9 185:8<br>199:7 202:12<br>215:17 216:16<br>226:8,22,25 242:2<br>297:24 323:22<br><b>disagreed</b> 237:5<br><b>disagreement</b><br>215:20 222:18<br>277:19<br><b>disclose</b> 80:9<br><b>disclosed</b> 360:21<br><b>disclosure</b> 250:18<br><b>discovered</b> 81:20<br>330:13,15<br><b>discovery</b> 37:13<br>37:17 294:6,25<br>295:4,8,10,17<br>301:17 307:16<br>308:11,15,19<br>309:7,10,11,16,22<br>313:9 349:4,6<br><b>discrepancies</b><br>297:15<br><b>discuss</b> 77:3<br>243:25 244:5,7<br>246:1 270:13<br>285:25 335:24<br>343:14 361:10<br><b>discussed</b> 244:2,16<br>248:24 284:12<br>294:3 309:25<br>312:2 347:23<br>356:17<br><b>discussing</b> 244:3<br>244:23 327:9<br>356:16 | <b>discussion</b> 31:4<br>76:1 274:1 292:5<br>292:12,20 293:10<br>299:8 361:8<br>366:10<br><b>discussions</b> 253:18<br><b>disorganization</b><br>146:21<br><b>dispense</b> 192:18<br>193:14 194:15,17<br><b>dispensed</b> 16:16<br>105:25 123:24<br>139:20 150:11<br>155:1,7 194:22<br>195:6 196:1<br>211:11<br><b>dispenser</b> 151:4<br><b>dispensing</b> 14:13<br>95:15 104:12,19<br>105:3,23 106:18<br>120:2,3,13 121:4<br>121:15 123:4<br>125:6 126:4<br>131:13 135:3<br>138:22 140:13<br>153:9 154:4<br>155:15,18 156:5<br>156:11 157:4<br>174:7 192:4,10<br>193:7 194:6,10<br>198:12 211:13<br>229:16 238:19,23<br>238:25 247:9,10<br>335:2 353:21<br>354:25 355:23<br><b>dispute</b> 52:16,18<br>205:6,11<br><b>disputing</b> 115:18<br>264:16<br><b>disregarded</b> 223:6<br>225:4 | <b>distance</b> 351:20<br><b>distribute</b> 26:8,24<br>101:18,21 183:8<br>251:13 253:21,22<br>256:13<br><b>distributed</b> 26:4<br>26:13 102:21<br>105:25 228:24<br>229:4 248:9<br>256:10 341:12,15<br>343:18,25<br><b>distributing</b> 26:18<br>101:3,13,19<br>103:22 104:5<br>106:5 137:20<br>167:10 203:21<br>228:12 230:3,24<br>252:2 283:14<br>284:13 317:4,20<br>343:21 345:21<br>346:5<br><b>distribution</b> 7:5<br>8:7 15:15 43:20<br>45:4,17 46:25<br>50:9,16,20 51:3<br>64:23 65:14<br>102:20 105:20<br>109:8,12,20<br>114:25 133:19<br>148:4,11 165:12<br>200:7 206:4<br>213:15 217:1<br>218:23 221:24<br>223:18 224:19<br>225:19 226:7<br>227:3,12,19<br>229:11,24 230:14<br>231:13 237:3<br>240:7 246:10,11<br>246:22 247:19<br>248:1,2,15,22 |
|---|---|--|---|

## [distribution - documents]

Page 20

|                           |                            |                           |                        |
|---------------------------|----------------------------|---------------------------|------------------------|
| 249:16 250:22             | 107:20 109:7               | 212:4,16,17 215:5         | 168:14 169:23          |
| 256:10,15 257:8,9         | 111:13,20 113:16           | 215:13 216:2,17           | 190:1,23 191:3         |
| 260:15 266:21,21          | 117:7 127:8                | 216:25 217:20             | 195:18 196:19          |
| 282:16 284:25             | 140:19 161:21,23           | 227:2,18 231:21           | 197:2,3,18,20          |
| 285:2 286:25              | 162:12,19 164:21           | 258:9 259:5 260:3         | 218:4,7 226:5,23       |
| 287:6 291:8 297:6         | 165:12 166:11,12           | 269:17 276:23             | 227:4,8 228:2,8        |
| 297:19 309:25             | 167:1,12 211:17            | 317:8,22 318:3            | 233:8,9 240:25         |
| 310:5,11 311:7            | 229:19 255:13,19           | 319:19 327:24             | 296:16 298:17          |
| 314:21 315:3              | 255:23 257:19              | 335:11 355:22             | 300:18,19 305:10       |
| 318:25 321:19             | 269:5,12 282:21            | <b>diverted</b> 110:19    | 322:18 332:14          |
| 323:13 343:12             | 283:4 285:7                | 209:24 210:5,12           | 354:6                  |
| 345:19 346:10             | 298:12 310:2,19            | 239:22,23 240:1           | <b>documentary</b>     |
| 347:24 354:11             | 310:23 312:6,24            | <b>diverting</b> 131:8    | 331:13 344:23          |
| <b>distributions</b>      | 318:10 335:10              | 151:10 153:2              | 345:2                  |
| 149:13 165:10             | 342:23 343:3,4             | <b>division</b> 1:3 51:22 | <b>documentation</b>   |
| 166:2 205:4               | 345:18 355:24              | 212:17                    | 276:3 277:24           |
| 255:21 259:9              | <b>district</b> 1:1,2 23:7 | <b>divisional</b> 62:20   | 278:4 279:4            |
| 260:9 286:24              | 197:3 198:21               | 63:4 78:7                 | 297:21 313:4,6         |
| <b>distributor</b> 13:16  | 202:22 291:16              | <b>doable</b> 304:8       | 322:24 323:6           |
| 45:1,16 61:1              | <b>diversion</b> 13:18     | <b>doctor</b> 98:9        | 326:9 344:4 346:1      |
| 71:12 72:19 102:5         | 15:5 34:9,18               | 138:16 158:7              | <b>documented</b>      |
| 102:6,9 112:7,25          | 35:21 36:23,24             | 193:17 201:19             | 217:25 225:23          |
| 147:14,18,19              | 53:19 59:17,21             | 202:9 211:2               | 227:20 278:6           |
| 148:12 162:5,6            | 60:1,11,16,23 61:6         | <b>doctor's</b> 193:7     | 313:18 322:19          |
| 166:16 183:4              | 61:10,14,25 62:16          | <b>doctors</b> 95:11      | <b>documenting</b>     |
| 184:15 301:6,9,12         | 63:6 64:19 66:10           | 107:25 138:15             | 217:22                 |
| 301:14,15,21              | 67:19,22 69:11             | 192:17,25,25              | <b>documents</b> 37:23 |
| 302:14,21 311:11          | 70:15 71:1,24              | 193:14,19 194:11          | 37:24 38:9,10,17       |
| 312:2,10,18,22            | 72:23 75:11 78:9           | 194:15 196:1              | 38:21,25 39:5,16       |
| 313:1,6,11 318:2          | 78:17,25 81:20             | 197:17,21 198:12          | 39:18,19 49:1,10       |
| 319:8,12 336:8,11         | 83:8,24 87:13,20           | 198:14 199:20             | 80:12 135:24           |
| 342:18,23 343:4           | 109:15,18 110:15           | 200:14,18 201:21          | 159:3 160:1            |
| 345:9 346:16              | 111:16,22 122:5            | 202:1,11,25 203:3         | 161:14 169:13          |
| 347:3,13,16,20            | 129:9,19,24                | 203:21 204:10,14          | 196:7 210:2            |
| 355:22 356:9              | 130:12 132:6               | 204:20,22 205:4,7         | 214:13 216:3,3         |
| <b>distributor's</b>      | 133:18 135:11,14           | 205:14,17,19              | 217:2,5,9,15           |
| 112:9 255:13              | 137:2,16,18,24             | 206:4,14 209:2,13         | 229:10 231:10          |
| <b>distributors</b> 25:20 | 138:4 139:10               | 211:8                     | 232:22 233:3           |
| 26:12,20,23 27:1          | 157:19 177:22              | <b>document</b> 1:11      | 235:14 236:2,5,9       |
| 45:5,9 46:4 66:1          | 178:5 192:11               | 31:19 39:2,9,11,14        | 236:11,23 250:16       |
| 83:7 85:14,22,25          | 200:6 210:17               | 51:24 139:15              | 276:19 286:18          |

|  |  |  |   |
|--|--|--|---|
| 291:11 292:1,2<br>293:24 294:5,10<br>296:7 298:20<br>309:20 328:16<br>332:9,11,14,23,24<br>333:1,3,5,6,16<br>334:1 345:4 351:7<br><b>doing</b> 39:17 40:22<br>55:22 59:9 60:21<br>72:16 73:13 83:17<br>100:6 102:4 104:2<br>109:11,15,16,19<br>109:23 110:9,10<br>110:11,17 111:20<br>120:10 130:22<br>142:2 143:23<br>149:12 156:6<br>162:18 171:3<br>176:2 177:15<br>228:4 234:3 237:4<br>258:2 261:15<br>285:1 349:1<br><b>doj</b> 336:17<br><b>dollar</b> 58:13<br><b>dollars</b> 33:2,17<br>55:7 57:16<br><b>doors</b> 97:4,5<br><b>dosage</b> 16:16<br>149:17,25 150:11<br>151:12 152:24<br>153:14 155:1,6<br>170:25 183:11<br>187:17 188:6<br>189:7,23 195:7<br>204:22 205:8,15<br>206:12 255:2<br>256:4 268:23<br>272:14 341:12<br><b>dosages</b> 136:13<br>148:22 171:5 | <b>dose</b> 123:19<br>134:24 135:9<br>136:6 137:11<br>140:14 155:6<br><b>doses</b> 140:21<br>149:7 187:11,23<br>195:23 200:23<br>201:4,8,15,20<br>202:17<br><b>double</b> 152:3<br><b>doubled</b> 314:7<br>315:12<br><b>doubling</b> 314:11<br>314:16 315:10,10<br>315:17,20 316:3<br><b>download</b> 169:7<br><b>downtown</b> 24:13<br><b>downward</b> 317:15<br><b>dozen</b> 219:7<br>225:19 226:6<br><b>dr</b> 47:23 48:7,18<br>48:24 49:7,10,17<br>49:20 50:25 51:6<br>51:12,23 52:2,5,11<br>52:21 83:9,21<br>96:16 98:1,8,11,22<br>99:17 100:1,9<br>105:19 106:20<br>113:4 114:7,21<br>115:14 117:25<br>120:6 133:5<br>140:12 146:2,25<br>147:8 151:3 157:1<br>157:6 162:13<br>169:3,6,19 184:20<br>185:10 186:2<br>195:19 200:22<br>201:3,7,11,14,19<br>202:15 204:15,15<br>204:16 243:5,18<br>243:25 244:17 | 331:6 340:23<br>354:15 362:3<br><b>draft</b> 113:24 238:7<br>238:11 241:10<br><b>drafting</b> 241:14,23<br>241:24 242:9<br><b>dramatic</b> 140:6<br><b>draw</b> 73:24 98:20<br>100:4 122:6 124:5<br>137:5 157:21,24<br>158:12 159:3<br>192:20<br><b>drawing</b> 123:2<br>132:20<br><b>dream</b> 110:14,14<br><b>dreszer</b> 202:15<br>204:16<br><b>drew</b> 11:5<br><b>drill</b> 37:1<br><b>drive</b> 145:12<br><b>driven</b> 48:23,24<br><b>drops</b> 172:25<br><b>drug</b> 17:9,15 92:3<br>92:14,20 94:24<br>95:15 96:4,7,11<br>97:10 120:4<br>121:15 139:10<br>152:9 153:24<br>155:15 156:16<br>190:14 191:10,13<br>211:3 233:17,25<br>234:12 275:14<br>356:9<br><b>drugs</b> 26:4,8 96:19<br>98:4 101:4 103:21<br>104:12,19 105:3,5<br>106:15 110:18<br>111:2 123:23,24<br>123:25 128:19<br>131:13 133:20<br>139:13 140:15 | 149:13 170:25<br>192:10,18 198:13<br>251:13 254:15<br>314:18 334:6<br>356:11<br><b>due</b> 70:12,13,19<br>71:3 97:18,22<br>109:23 110:24<br>149:9,12,20 153:7<br>222:1,5 223:8<br>225:6,24 226:5,17<br>226:23 227:4,9,10<br>227:20 228:3<br>229:9,23 230:2,13<br>239:24 271:12,12<br>271:16,17 272:15<br>276:20 278:9,13<br>278:16,18 280:2<br>298:9 313:18<br>317:7,20 320:22<br>323:1 344:19,22<br>345:5,6,12 346:18<br>346:22 352:19<br><b>duly</b> 24:2<br><b>duration</b> 277:7<br><b>dus</b> 270:20<br><b>duty</b> 110:12<br>158:18<br><b>dying</b> 184:3 |
| <b>e</b>   |  |  |   |
| <b>e</b> 2:1,1 3:1,1 4:1,1<br>5:1,1 6:1,1 7:1,1<br>8:1,1 9:1,1,5 10:1<br>10:1 11:1,1 13:21<br>15:6,21 232:21<br>369:1,1<br><b>eagle</b> 6:4 12:4<br>13:11 14:1,13,21<br>15:1,17 16:1 21:6<br>24:7 25:16 31:13<br>42:17 50:21 51:22   |  |  |   |

|   |  |   |  |
|---|--|---|--|
| 52:10 53:2 74:8<br>86:6 97:1 100:10<br>100:14 102:4,17<br>103:1,5 104:10<br>106:4 114:17,23<br>116:14,15 117:10<br>118:5,7 119:22<br>120:3 121:22<br>123:5 128:8<br>132:25 134:16<br>136:20 153:12<br>156:12 157:8<br>158:1 307:5 340:1<br><b>eagle's</b> 74:5 97:12<br>100:25 101:2<br>103:15 104:12,19<br>105:2 106:18<br>115:3 120:13<br>121:4,16 122:3<br>133:8 134:20<br>136:4,17 140:13<br>155:1<br><b>eagles</b> 154:4<br><b>earlier</b> 82:10 85:1<br>107:19 112:18<br>120:14 129:7<br>152:6 161:16<br>211:19 239:10<br>257:6 276:17<br>282:23 284:12<br>306:3 323:10<br>327:8,10 333:15<br>339:14 340:4,22<br>345:17,22 349:11<br>356:5 364:3<br>366:10<br><b>early</b> 41:4 61:16<br>62:5 125:24,24<br>142:4,13,13<br>152:16 358:16<br>365:14 | <b>earn</b> 56:6<br><b>earned</b> 54:17 55:7<br>55:11<br><b>earning</b> 55:15<br><b>easier</b> 55:14 96:24<br>115:23 365:18<br><b>east</b> 64:6,13<br>199:15<br><b>eastern</b> 1:3 7:17<br>359:24<br><b>easy</b> 286:21<br><b>eckerd</b> 8:6<br><b>edt</b> 23:10 83:2<br>160:10 245:5,5<br>303:9 338:25<br>357:20 359:5<br>368:12,13<br><b>educated</b> 130:6<br><b>eekhoff</b> 10:5<br><b>effect</b> 110:24<br><b>effective</b> 13:17<br>36:16 46:22 69:10<br>70:8,15 71:1<br>87:11,20 88:2<br>102:19 104:7<br>167:13 175:3<br>179:1 254:13<br>258:8 259:4,14<br>260:2 269:13<br>298:14 313:19<br>317:8,21 318:3,8<br>319:14 325:22<br>331:14 333:10<br>335:11 336:10<br>344:8<br><b>efficient</b> 358:23<br><b>efforts</b> 55:11 56:6<br>57:12 77:8 108:19<br><b>eight</b> 32:14 171:22<br>172:25 176:11<br>177:10,15 180:22 | 181:18 182:8<br>185:17 187:17<br>188:22 189:3<br>200:22 202:16<br><b>eighteen</b> 140:1<br>201:9,15,20<br><b>eighty</b> 128:15<br>140:21 148:18,19<br>150:10 153:17,21<br>154:4,25 155:7<br>172:25 181:11<br>200:23 207:20<br><b>either</b> 71:17 76:14<br>95:21 121:12<br>151:3 173:5 207:1<br>207:13 227:5<br>249:10 250:11<br>258:13 298:17<br>302:20 313:9<br>327:12 333:3<br>337:15<br><b>eleven</b> 89:16<br><b>elias</b> 2:9<br><b>eliminate</b> 135:15<br><b>eliminates</b> 137:22<br><b>elisa</b> 8:9 245:13<br>290:23<br><b>elisa.mcenroe</b><br>8:15<br><b>elkins</b> 2:6<br><b>elm</b> 181:5<br><b>else's</b> 220:9<br><b>email</b> 16:11 18:5<br>18:10,14,18,22<br>19:6,10,14,18,22<br>20:6,10,14,18<br>141:18,20,25<br>142:7,20,21 143:1<br>144:8,12,13 152:5<br>220:16 274:4<br>275:17,18 276:14 | 278:8,13 279:1,1,6<br>286:22 287:13,19<br>290:5,7,8,12,24<br>291:5 296:6,11<br>327:23 329:7<br>349:10 358:7<br>361:23 364:7<br>370:17<br><b>emailed</b> 144:11,14<br>361:18<br><b>emails</b> 142:3,9,9<br>142:15 143:5<br>272:8 279:13<br>294:2 328:17<br>364:9<br><b>embracing</b> 113:19<br><b>employed</b> 127:8<br><b>employee</b> 66:2<br>141:2 326:1,19<br>327:4<br><b>employees</b> 346:20<br><b>employing</b> 116:14<br><b>employment</b> 44:12<br>45:6 61:3 72:4<br><b>enacted</b> 266:11<br><b>enacting</b> 100:2<br><b>encino</b> 12:21<br><b>enclosed</b> 370:11<br><b>encompassed</b><br>319:25<br><b>encompasses</b><br>70:17 265:9<br><b>encompassing</b><br>264:1<br><b>ends</b> 303:5 329:15<br>338:21 357:16<br>359:1 368:7<br><b>enforce</b> 82:3 260:4<br><b>enforcement</b><br>17:16 60:17 62:10<br>77:8,10 78:5,13 |
|---|--|---|--|

|  |  |   |  |
|--|--|---|--|
| 85:6 217:13 280:9<br>280:12,16,23<br>281:13 282:15<br>283:12,23 284:4<br>292:12 293:3<br>355:4,13<br><b>engaged</b> 99:18<br>122:4 138:24<br>211:8 229:16<br><b>engineer</b> 29:13<br><b>enhanced</b> 322:1<br><b>ensure</b> 70:18<br>149:1 217:14<br>298:12<br><b>enter</b> 31:6<br><b>entered</b> 335:25<br>372:9<br><b>enterprise</b> 199:1<br>199:11<br><b>entire</b> 41:2 62:17<br>136:14 172:6<br>187:24 196:10<br>212:13 237:14<br>298:2 306:9 371:5<br>372:5<br><b>entirely</b> 69:3<br>109:6<br><b>entirety</b> 39:21<br>333:8 350:22<br><b>entities</b> 25:25<br>26:25 35:8 199:10<br>246:4,19 247:13<br>250:22 251:3<br>254:6 257:7,14<br>258:17 259:20<br>267:1 280:1,10<br>339:9<br><b>entitled</b> 213:24<br>360:5 365:4<br><b>entity</b> 93:25 257:3<br>264:11 284:21 | 285:1 301:6<br>305:22<br><b>entries</b> 307:16<br>322:22<br><b>entry</b> 322:25<br><b>envelope</b> 163:16<br>362:11<br><b>epidemic</b> 107:5<br>108:23 191:13<br>209:4 318:24<br>325:5<br><b>equated</b> 297:23<br><b>equivalency</b><br>170:17<br><b>equivalent</b> 170:18<br><b>errata</b> 370:13,18<br>372:7,10,18 373:1<br><b>error</b> 115:25<br>116:5,9<br><b>escalated</b> 104:4<br>152:9<br><b>escalation</b> 123:4<br><b>especially</b> 113:25<br>149:18 230:24<br>242:10 349:3<br><b>esq</b> 370:5<br><b>essence</b> 97:17<br>153:6,7<br><b>essential</b> 71:4<br>177:23<br><b>essentially</b> 48:6<br>67:8 77:22 91:8<br>111:1 130:11<br>145:1,17 192:9<br><b>established</b> 62:10<br>91:13<br><b>estimate</b> 57:4<br>242:13<br><b>et</b> 18:6 20:19<br><b>evade</b> 29:7 | <b>evaluate</b> 324:2<br><b>evaluated</b> 125:15<br>178:18<br><b>evaluation</b> 88:18<br>322:15<br><b>evaluations</b><br>192:13<br><b>evasive</b> 29:7<br><b>evasiveness</b> 29:11<br><b>evening</b> 361:12<br><b>event</b> 127:24<br>152:21 202:8<br>295:19<br><b>events</b> 344:24<br><b>eventually</b> 151:9<br>313:11<br><b>everybody</b> 119:7<br>326:11,11 362:12<br>364:7 367:9 368:5<br><b>everyone's</b> 365:18<br><b>evidence</b> 22:14<br>29:10 103:14<br>116:12 147:4<br>301:15 321:2<br>331:14,23 333:9<br>344:23 345:5,13<br><b>exact</b> 66:22 124:25<br>170:9 242:25<br>347:15<br><b>exactly</b> 54:5,9<br>75:1,6 129:20<br>161:4 206:6<br>246:14 260:7<br>264:3 290:18<br><b>examination</b> 13:1<br>13:5,6,7,8,9 23:11<br>24:5 160:22<br>245:10 303:14<br>339:5 361:7<br>367:18 | <b>examine</b> 41:20<br>47:20 67:23<br>104:11 122:9<br>192:3 220:5 363:6<br><b>examined</b> 24:2<br>46:16 122:8,14<br><b>example</b> 26:15<br>40:23 51:19 77:13<br>106:1 120:25<br>122:14 128:21<br>134:6 135:1 162:4<br>162:25 164:16<br>167:7 178:16<br>253:19 254:20<br>280:24 286:4<br>294:2,11 297:8<br>301:13 305:1<br>319:16 346:23<br>355:20<br><b>exceeded</b> 320:23<br><b>exceeding</b> 123:8<br>334:7<br><b>excellent</b> 298:10<br><b>exception</b> 42:21<br>270:22 276:7<br>277:10<br><b>exceptions</b> 271:7<br>271:11 272:1,5,13<br>272:16 275:5<br>276:12,15,18,20<br>277:13<br><b>excess</b> 274:23<br><b>excessive</b> 274:15<br>298:10<br><b>exchange</b> 142:9<br><b>exclusive</b> 87:6<br>90:23 193:20<br><b>exclusively</b> 68:23<br><b>excuse</b> 255:22<br>259:12 |
|--|--|---|--|

[executed - fair]

Page 24

|   |  |  |   |
|---|--|--|---|
| <b>executed</b> 372:10<br><b>execution</b> 371:14<br>372:19<br><b>executive</b> 199:14<br><b>exemplary</b> 109:13<br>155:13<br><b>exercise</b> 156:9,13<br>265:25<br><b>exercised</b> 264:10<br>264:25<br><b>exercising</b> 110:12<br>265:15 266:1,15<br><b>exhibit</b> 13:14,22<br>14:5,8,11,16,19<br>15:4,8,13,19,23<br>16:5,8,10,14,23<br>17:5,8,12,14 18:4<br>18:9,13,17,21 19:5<br>19:9,13,17,21 20:5<br>20:9,13,17 21:4<br>31:13,15,20 32:14<br>38:14 51:7,10<br>52:20,22,23 57:19<br>57:20 63:22 64:17<br>86:6,6,7 98:12<br>99:6,9 107:1<br>114:17,17,18<br>119:21,23,25<br>128:9 130:15,16<br>132:25 133:1,2<br>134:16,16,17<br>137:25 138:1<br>141:13,15 150:3,4<br>154:24 163:2<br>164:8 167:25<br>168:3,5,6,9 184:21<br>184:23 186:8<br>190:4,8,12 196:20<br>198:2,2 214:8<br>220:17 273:2<br>286:15 287:10,17 | 287:25 288:5,11<br>288:14,19,24<br>289:4,9,14 295:23<br>304:12,14,16<br>306:10 307:6<br>339:11 340:1<br><b>exhibits</b> 13:11<br>14:1 15:1 16:1,20<br>17:1 18:1 19:1<br>20:1 21:1 31:13<br>220:8 224:1,3,9,23<br>360:20 362:7<br><b>exist</b> 272:17 279:4<br>281:3 331:23<br><b>existed</b> 278:19<br>279:8 324:1<br><b>exists</b> 332:1,3<br><b>exp</b> 369:23,24,24<br><b>expect</b> 94:21<br>352:19<br><b>expectation</b> 92:19<br>92:19 229:20<br><b>expectations</b> 96:7<br>97:20<br><b>expected</b> 91:10<br><b>expecting</b> 95:11<br><b>expects</b> 94:10<br>217:24<br><b>experience</b> 64:20<br>65:20 66:8 74:6<br>80:23 159:5<br>192:21 209:8<br>216:25 301:5<br>317:10 326:1,19<br>327:4<br><b>experienced</b> 94:22<br><b>experiences</b> 95:13<br><b>expert</b> 13:15 14:6<br>14:9 28:22,23<br>29:2 30:21 31:19<br>31:21,23 36:1 | 37:6,20 44:17<br>49:19 64:17,22<br>65:4 68:23 82:1<br>115:11 130:19,19<br>178:10,22 192:22<br>209:11 210:1<br>238:4 306:24<br>307:4 357:1,4<br>359:18 360:9<br><b>expertise</b> 44:6,11<br>96:14 176:2<br><b>experts</b> 28:17<br>146:9 147:9<br>306:23 341:1,5<br><b>expiration</b> 29:13<br>371:19 372:25<br>373:25<br><b>explain</b> 41:11<br>80:12 244:13<br>296:6 304:24<br>308:13<br><b>explanation</b> 153:5<br>231:5 262:22<br><b>extend</b> 131:14<br><b>extensive</b> 73:11<br><b>extent</b> 48:1,20<br>179:22 209:2<br><b>extra</b> 358:16<br><b>extremely</b> 144:3<br><b>eye</b> 255:5<br><b>eyebrow</b> 137:8<br>149:19<br><b>eyebrows</b> 133:17<br>133:23 152:23 | <b>facing</b> 119:5<br><b>fact</b> 28:5 45:15<br>49:5 60:9 69:24<br>91:17 94:22 97:9<br>113:8 120:18<br>135:16 142:2<br>151:25 156:24<br>167:21 279:23<br>282:14 292:19<br>315:12 319:15<br>325:10<br><b>factor</b> 137:1<br>157:16 158:19<br>170:23<br><b>factors</b> 122:22<br>123:11 124:5,9<br>132:15 134:4<br>153:23 178:4<br>314:20<br><b>facts</b> 29:3,4 34:3<br>158:7<br><b>factual</b> 280:15<br><b>fail</b> 76:12,13<br><b>failed</b> 175:1,2<br>201:25<br><b>failing</b> 335:10,12<br><b>failure</b> 70:13 90:5<br>175:10,12 264:23<br>313:19<br><b>failures</b> 107:4<br>109:23 281:23<br><b>fair</b> 34:14 47:6<br>48:2 132:24<br>175:21,24 179:8<br>179:12 180:2<br>182:24,25 191:3<br>210:6 211:5,6,25<br>213:25 214:1<br>220:7 225:7 234:5<br>234:10 236:11<br>246:19 247:20 |
|   |  | <b>f</b><br><b>f</b> 3:5 10:22 369:1<br><b>facilities</b> 74:5 80:9<br>101:12 348:10<br><b>facility</b> 101:12<br>102:3 254:9  |   |

[fair - five]

Page 25

|  |   |   |   |
|--|---|---|---|
| 248:4 251:23<br>252:11 256:13<br>265:19,23 269:6<br>269:14,23 277:3<br>282:11 284:18<br>285:2 291:12<br>296:21 298:22<br>302:10,23 338:3<br>367:21<br><b>fairly</b> 145:16<br>349:7<br><b>fairness</b> 81:11,25<br><b>faith</b> 80:22<br><b>falduto</b> 11:16<br><b>fall</b> 63:16<br><b>falls</b> 134:6<br><b>familiar</b> 84:12<br>86:24 90:11 91:16<br>115:15 186:11,13<br>186:18 197:13<br>297:21 320:1,4<br><b>families</b> 140:15<br><b>family</b> 189:7<br><b>far</b> 46:12 47:5<br>48:2 65:16 77:5<br>82:17 141:11<br>170:14 190:11<br>200:19 242:2,3<br>252:9 261:3<br>262:23 269:16<br>298:25 316:16<br>322:23<br><b>farm</b> 11:20<br><b>farrell</b> 3:16<br><b>farrellfuller.com</b><br>3:21<br><b>farther</b> 64:12<br><b>farthest</b> 113:21<br><b>fashion</b> 117:4<br><b>fast</b> 121:11 | <b>faster</b> 120:19<br>181:2 241:1<br><b>faults</b> 89:13 90:1<br><b>feasible</b> 37:14<br><b>february</b> 14:18<br>287:24 349:24<br><b>federal</b> 23:6 30:12<br>61:24 64:22 66:6<br>94:6,7,15 200:5<br>209:3 216:20<br>217:6 263:19<br><b>feedback</b> 292:21<br>293:10,16<br><b>feeding</b> 224:13<br><b>feel</b> 102:15<br><b>feeling</b> 79:16<br><b>fellow</b> 144:18<br><b>fentanyl</b> 252:17<br><b>fewer</b> 219:24<br>340:15<br><b>fifteen</b> 36:3 42:15<br>42:20 46:25<br>131:15,17 132:4<br>133:22 232:10<br><b>fifty</b> 32:14 40:6<br>86:2 140:2 185:23<br>335:15<br><b>fight</b> 358:18<br><b>fighting</b> 111:8<br>117:19<br><b>figure</b> 108:12<br>175:18 179:6<br>189:14 195:5<br>206:20 365:17<br><b>figured</b> 168:4<br><b>figures</b> 195:1,2<br><b>file</b> 173:21 275:13<br>278:10,14,17,18<br>279:8,14,19,24<br>280:1,5 | <b>filed</b> 308:16<br><b>files</b> 75:23<br><b>fill</b> 157:8 158:7<br>192:19 194:1<br>211:2 239:18<br>240:8 342:6,10<br><b>filled</b> 14:21 108:10<br>108:11 155:7<br>206:24 207:1,13<br>207:19 209:23<br>210:5,11,12<br>342:15<br><b>filling</b> 41:22 43:1,1<br>43:7,12 44:1,16<br>262:2 263:15<br>265:16<br><b>final</b> 17:10 37:7,11<br>337:25<br><b>finalizing</b> 241:15<br><b>financial</b> 216:18<br><b>find</b> 40:5,14 89:12<br>90:1,4 113:2<br>218:4,17 249:11<br>277:9 280:2<br>298:16 370:11<br><b>findings</b> 76:19<br>217:22 297:15<br><b>fine</b> 81:13 220:25<br>221:1 250:24<br>308:7 312:2<br>358:25 363:18<br>367:1<br><b>fined</b> 111:14<br><b>finish</b> 45:20,22<br>123:20 150:20<br>151:1 160:20<br>189:10 236:15<br>262:14 263:1<br>359:20 365:12<br><b>finished</b> 123:21<br>150:22 | <b>firm</b> 4:7 31:10<br>161:9 163:18,19<br>169:3<br><b>first</b> 24:2 27:8<br>36:6 61:2,3 64:18<br>65:17 77:9 98:23<br>99:15 101:3,12<br>145:10 152:16,20<br>164:13 165:9<br>167:25 169:22,24<br>169:25 171:14,15<br>190:14 191:8<br>192:7,16 197:1<br>203:5 212:10<br>215:21 239:24<br>244:12 254:24<br>263:18 272:20<br>273:12 279:7<br>285:23 291:5<br>297:13 302:25<br>304:3,3 334:17<br>340:12<br><b>fit</b> 363:23<br><b>fits</b> 112:16,24<br><b>five</b> 25:6 41:15<br>42:1,11 50:11<br>51:1 54:8 58:11<br>58:11 61:2 62:7<br>82:21 94:19 95:10<br>95:11 121:2,2<br>125:25 166:21<br>174:12 179:4,10<br>179:15 181:3<br>187:10 189:1,21<br>195:23 204:20<br>205:7 206:12,14<br>241:2,6 242:4<br>256:2 268:23<br>270:20 271:7<br>272:5,13 274:18<br>276:12 305:24 |
|--|---|---|---|

[five - forth]

Page 26

|   |  |   |   |
|---|--|---|---|
| 306:12 338:13<br>339:20 357:13<br>364:18 365:12,14<br>365:25 366:3<br><b>fix</b> 177:1<br><b>flag</b> 48:12 149:8<br>149:19 151:16<br><b>flagged</b> 15:16<br>51:20 52:9,13<br>53:4 115:2 116:17<br>118:19 162:10<br>164:16 165:1,7,8<br>165:22 166:6,7,17<br>167:1 234:13,18<br>239:18,20,20,24<br>239:25 240:6,13<br>255:1 256:12,16<br>320:17 322:5<br>341:13,20 350:5<br><b>flagging</b> 15:15<br>114:25 162:14,19<br>162:21 182:21<br>234:13 240:7<br>256:21<br><b>flaherty</b> 5:7<br><b>flahertylegal.com</b><br>5:11<br><b>flavor</b> 115:5<br><b>flip</b> 187:20 255:6<br>308:1 316:22<br>342:20<br><b>flipping</b> 58:3<br><b>floor</b> 2:19 3:9 6:13<br>12:11<br><b>florida</b> 4:20 65:15<br>197:3 198:5,7,10<br>199:20 202:1,9,23<br>204:21 205:5,8,17<br>206:6,15,24<br>207:22 208:16,21<br>208:25 327:25 | <b>florida's</b> 198:21<br><b>fluid</b> 112:23<br><b>fly</b> 304:13<br><b>focus</b> 41:1 68:23<br>82:16 102:1 109:6<br>179:15 312:16<br><b>focused</b> 135:19<br>139:4,10 174:10<br><b>focusing</b> 125:5<br>241:5<br><b>folder</b> 250:17<br>279:2,18<br><b>folks</b> 42:23 97:1<br>191:21 197:17<br>237:4<br><b>follow</b> 24:21 29:22<br>81:5 299:2 328:8<br>328:24 338:8<br><b>followed</b> 217:14<br><b>following</b> 23:12<br>142:5 191:22<br>235:10 255:11<br><b>follows</b> 24:3<br>255:10<br><b>footnote</b> 300:3,4,9<br>300:14,15 329:14<br>329:15,18,23<br>330:1<br><b>footnotes</b> 195:12<br>195:13 238:15<br>329:10 350:18,24<br><b>force</b> 17:10,10<br>61:22 62:6 190:14<br>190:15,17 191:8<br>191:10<br><b>forecast</b> 96:3<br><b>foregoing</b> 23:7<br>369:8,11 371:13<br>372:18<br><b>forest</b> 10:23 | <b>forever</b> 346:12<br><b>forget</b> 213:10<br><b>form</b> 22:10 29:18<br>29:24 32:11,21<br>33:11,19 34:10<br>35:22 36:4,13<br>37:22 43:12 44:9<br>47:7 55:12 56:8<br>56:12 57:8 59:1<br>68:2 74:12,23<br>79:11,19 80:18<br>81:14 82:9 85:20<br>89:21 92:15,22<br>93:13,21 94:13<br>95:2,19 97:14<br>103:7 108:14<br>109:1,21 110:20<br>111:23 114:10<br>116:4 118:10<br>120:15,21 121:7<br>123:19 128:3<br>129:2 130:3 131:1<br>132:19 134:2<br>136:9 137:4 139:7<br>141:3 146:11,15<br>147:5 149:22<br>154:7 155:16<br>156:14 157:11,20<br>158:3 159:1,18<br>165:24 169:11<br>174:15 175:16,25<br>177:12 178:6,7<br>179:17 180:4<br>186:5 196:8 205:1<br>205:10,21 206:18<br>207:8 210:16,21<br>212:25 214:15<br>215:4 218:10,24<br>223:10 225:8<br>226:9 227:22<br>232:23 234:21 | 238:11 241:7<br>242:6 249:19<br>259:22 263:17<br>264:13 265:4<br>269:15 279:5<br>282:17 284:19<br>295:1 296:22<br>302:24 316:15<br>318:4 322:7,14,15<br>322:16 324:12<br>330:16 331:10<br>333:18,23 337:12<br>344:5 347:9 351:5<br><b>formal</b> 77:18,19<br>277:23,24 278:4<br>324:23 325:1,14<br>325:20,20 344:20<br><b>formed</b> 49:16<br>173:18 332:15<br><b>former</b> 36:2,10<br>65:3<br><b>forming</b> 33:22<br>191:4 209:25<br>222:10,22 223:4,8<br>224:19 225:6<br>233:25 238:17,23<br>242:14 334:1,25<br>336:25<br><b>formula</b> 170:24<br>232:19,19,20<br>233:4,10,13<br><b>formulate</b> 46:1<br>49:8,11 110:1<br>180:6<br><b>formulated</b> 49:13<br><b>formulating</b> 39:9<br>159:21 355:3<br><b>forth</b> 27:1 87:22<br>88:16 238:10<br>367:4 |
|---|--|---|---|

[forty - giant]

Page 27

|   |  |   |   |
|---|--|---|---|
| <b>forty</b> 171:22<br>172:17 176:11<br>177:15 180:11,22<br>181:7,8 182:9,10<br>185:17 202:16<br>316:2 359:11<br>364:18,18 365:12<br>365:14,25 366:3<br><b>forward</b> 39:16<br>121:11 322:11<br>370:15<br><b>found</b> 81:19 147:3<br>218:8<br><b>four</b> 61:2,4 137:11<br>140:2,8 187:16,23<br>188:5,22,24 189:3<br>256:2 259:10<br>306:5 328:18<br><b>fourteen</b> 42:17,20<br>131:14 140:7<br>200:24<br><b>fraction</b> 153:14<br><b>frame</b> 100:21,24<br>128:4 129:5,6<br>131:20,24,25<br>132:3 153:19,25<br>154:5,10,17<br>180:11 182:4<br>189:25 198:9,11<br>200:14,16,17,25<br>201:5 202:10,18<br>239:11 310:12<br>322:2,8<br><b>frames</b> 46:21<br>135:14<br><b>franklin</b> 151:21<br>152:22,23 157:1,6<br>172:11,16,24<br>177:18 180:9<br><b>frankly</b> 293:9 | <b>free</b> 371:14 372:20<br><b>frequency</b> 90:16<br>90:21 323:14<br>331:16 333:11,13<br>333:14<br><b>friday</b> 17:17<br><b>friend</b> 141:7<br><b>friend's</b> 210:16<br><b>front</b> 50:8 78:9<br>155:11 164:8<br>169:21 220:13<br>221:3,4,9,12<br>245:20 267:7<br>289:24 307:5<br>308:2 362:25<br>363:3,15<br><b>frost</b> 20:18 296:11<br><b>fulfill</b> 326:1,19<br>327:4<br><b>full</b> 39:5 40:12<br>64:18 80:22 85:16<br>126:12 186:25<br><b>fuller</b> 2:8 3:14,16<br>127:19 136:12,21<br>176:17 224:7<br>232:6,11 263:1<br>334:14 358:1,6,15<br>358:19 361:21<br>362:15,23 363:17<br>364:5,20 366:7,16<br>368:5<br><b>fully</b> 27:10,16<br>34:19,23 81:15<br>213:19 216:16<br>268:2<br><b>fumerton</b> 5:14<br>13:8 303:14,18<br>304:11 308:6,9<br>309:18 316:16<br>317:16,18 318:1<br>318:13 322:10 | 323:5 324:15<br>325:8,9 326:14,16<br>326:24 327:11<br>330:23 331:7,12<br>332:19,21 333:20<br>333:25 334:18<br>336:15 337:18<br>338:7,17 363:24<br><b>further</b> 37:17<br>100:17 147:13<br>149:20 244:13<br>277:22 338:7<br>369:15<br><br><b>g</b><br><b>g</b> 15:16 183:2<br><b>ga</b> 369:24<br><b>gap</b> 102:2<br><b>gather</b> 279:13<br><b>ge</b> 13:14,22 14:5,8<br>14:11,15,16,19<br>15:4,8,13,19,23<br>16:5,8,10,14 31:15<br>51:7 52:23 57:20<br>63:22 86:7 99:6<br>114:18 119:23<br>128:9 130:16<br>133:2 134:17<br>138:1 141:15<br>150:4<br><b>gears</b> 82:20<br><b>general</b> 36:17,17<br>42:6 67:12 91:25<br>126:11 145:25<br>148:17 171:7<br>190:19 199:24<br>200:17 270:2<br><b>generalization</b><br>127:6<br><b>generally</b> 40:6,21<br>46:18 48:22 57:15<br>57:18 59:8 61:21 | 68:6 71:22 75:19<br>76:10 77:25 82:10<br>85:24 86:2 91:11<br>91:17 97:16<br>112:13 126:6<br>127:1 131:11<br>132:23 142:15<br>145:13,21 149:24<br>150:13 154:15<br>177:18 210:9<br>217:4 218:15,25<br>320:21 341:5<br>345:16<br><br><b>generate</b> 142:3<br><b>generated</b> 294:1<br>325:2<br><b>geographic</b> 124:3<br>131:22 135:16<br>314:19 353:11,18<br>354:5<br><b>geography</b> 64:2<br><b>george</b> 197:20<br>203:10,14,23<br><b>georgia</b> 30:17<br>58:16<br><b>gerx</b> 101:22 102:3<br><b>getting</b> 61:11<br>101:5 102:14<br>106:11 119:14<br>142:23 277:10<br>285:13<br><b>giant</b> 6:4 12:4<br>13:11 14:1,13,21<br>15:1,17 16:1 21:6<br>24:7 25:15 31:13<br>42:17 50:20 51:22<br>52:10 53:2 74:5,8<br>86:6 97:1,11<br>100:10,14,25<br>101:1 102:4,17<br>103:1,5,14 104:10 |
|---|--|---|---|

|   |   |   |  |
|---|---|---|--|
| 104:12,19 105:2<br>106:4,18 114:17<br>114:23 115:2<br>116:14,15 117:10<br>118:4,7 119:22<br>120:3,12 121:4,16<br>121:22 122:3<br>123:5 128:8<br>132:25 133:8<br>134:16,20 136:4<br>136:17,20 140:13<br>153:12 154:4<br>155:1 156:12<br>157:8 158:1 307:5<br>340:1<br><b>gilfillan</b> 11:15<br><b>give</b> 30:24 32:9<br>39:13 54:16 58:4<br>77:22 82:15 89:24<br>127:3 142:19<br>143:9 179:18<br>191:6 193:20<br>220:3 226:11<br>242:24 262:22<br>264:4 269:11<br>270:1 283:20<br>286:20 290:11<br>294:9 295:25<br>305:16 308:5<br>334:10 361:11<br><b>given</b> 27:24 28:17<br>30:2,3,7 31:25<br>47:10,14 75:20<br>94:19 140:18,22<br>144:15 174:6<br>178:23,23 179:10<br>188:13 275:5<br>276:2 361:11<br>369:12<br><b>gives</b> 154:20 171:1<br>200:16 215:5 | <b>giving</b> 37:9 138:6<br>140:25 142:24<br>145:25 262:4,9<br><b>glanced</b> 39:6<br><b>go</b> 27:8 29:19<br>31:13 40:6 51:10<br>51:17 52:15,20<br>57:19 64:16 66:11<br>66:14 72:25 73:4<br>77:2 80:17 86:17<br>94:14,19 97:8,10<br>98:12 99:2 104:22<br>106:25 114:16<br>115:5,14,16<br>118:18 119:15,21<br>128:8 131:15<br>132:25 133:24<br>134:15 135:14<br>137:25 140:1,5,20<br>145:24 147:13<br>157:9 168:23<br>176:6 179:2<br>192:19 197:25<br>199:8,18 200:15<br>202:20 213:14<br>214:21 215:21<br>219:13,17,22<br>221:15 239:11<br>240:25 248:23<br>251:16 254:17<br>263:1,6 278:22,25<br>279:12 280:1,6,22<br>284:5 287:9,16<br>289:17,19 290:19<br>291:3 294:11<br>298:1 300:6<br>302:22 303:4<br>304:1 307:14<br>308:15,20 309:13<br>324:25 330:17<br>334:14 338:19 | 339:13 349:22<br>358:17,22,24<br>359:25 364:21<br>365:11<br><b>goes</b> 64:12 101:20<br>188:9 189:1 194:5<br>202:23 275:4<br>284:20<br><b>goetz</b> 2:15<br><b>going</b> 28:9 37:6,8<br>39:13 52:16 53:21<br>54:15 71:17,17<br>72:13,19 74:8<br>75:5 76:19 84:4<br>90:15 91:23 94:19<br>95:8 97:8 109:18<br>110:7,18 111:22<br>120:19 127:19<br>132:6,9 134:15<br>137:12 143:16<br>144:4 160:15<br>163:23 168:5<br>171:15,21 173:8<br>173:16 174:19,22<br>174:23 177:7<br>182:7 184:19,21<br>186:7 188:13,15<br>191:16,21 195:10<br>196:16 197:15,23<br>197:25 199:18<br>202:20 212:20<br>219:12,14,16,16<br>219:21 220:11,11<br>221:2,2,6,7,17<br>224:12 226:15<br>231:24 232:9<br>235:3,6 236:4,10<br>236:13 238:3<br>247:17 254:17,18<br>262:10,24 264:4,5<br>266:19 272:22,25 | 274:25 275:10<br>277:14 279:11<br>284:4 285:9,16<br>286:18 287:9<br>289:17,19 290:6<br>290:14,16,17,19<br>290:25 300:11,12<br>303:7,20,22 305:8<br>306:8 314:4 315:8<br>316:21 338:23<br>342:19 357:18<br>358:8,18,20,21<br>359:3,12 360:1,7,9<br>361:19 363:22<br>366:7,22 368:9<br><b>gold</b> 117:6<br><b>good</b> 23:15 24:6,9<br>24:10 48:14 80:16<br>81:10 109:11,16<br>110:12 111:20<br>112:19 114:2<br>118:1,3 122:3,24<br>123:13 126:18<br>132:17 134:11<br>137:23 146:19<br>149:11 155:24<br>157:17 161:1,2<br>183:2 185:6<br>240:18 243:1<br>245:11,16,18<br>269:22,22 286:5<br>289:22 293:22<br>303:3,15 339:6,7<br>344:13 363:24<br>368:6<br><b>google</b> 114:2<br>353:14 354:4<br><b>governed</b> 265:6<br><b>governing</b> 64:23<br>266:6 273:13 |
|---|---|---|--|

|  |  |   |   |
|--|--|---|---|
| <b>government</b><br>142:18,22 335:24<br><b>governor</b> 99:23<br>190:19 191:9<br>202:4<br><b>grab</b> 220:17<br><b>grade</b> 54:12 79:16<br><b>grand</b> 3:8<br><b>granted</b> 277:10<br><b>granting</b> 271:11<br><b>graphs</b> 49:20,24<br>50:1,7 115:20<br>153:8 317:1<br><b>great</b> 80:13 155:25<br>190:10,12 219:1<br>247:6,25 263:8<br>274:3 285:19<br>288:16 291:4<br>296:10,25 363:13<br><b>greater</b> 52:12 63:5<br><b>greater</b> 134:22<br><b>greatest</b> 170:13<br><b>greatly</b> 114:7,12<br><b>ground</b> 27:8 237:4<br><b>grounds</b> 22:12<br><b>group</b> 2:8 59:22<br>60:4 137:13 205:3<br><b>grouping</b> 232:19<br><b>growth</b> 14:12<br>120:1<br><b>gs14</b> 59:23<br><b>gs15</b> 60:2<br><b>guard</b> 87:12<br><b>guess</b> 29:5 33:12<br>35:12 36:7 37:13<br>37:14 42:9 56:22<br>70:8 73:23 79:20<br>105:14 111:25<br>126:18 142:17<br>171:1 180:7 210:8<br>215:20 216:21 | 223:2 242:16<br>243:13 294:5<br>306:2 315:20<br>332:1<br><b>guessed</b> 134:14<br><b>guidance</b> 113:21<br>113:22 140:25<br>142:16,19,25<br>145:8,25 152:16<br>347:7,10,12<br><b>guide</b> 113:24<br><b>guilty</b> 143:23<br><b>guise</b> 199:4,5<br><b>guns</b> 60:18<br><b>guys</b> 93:10 130:24<br>361:24 363:18,22<br>368:6<br><b>h</b><br><b>h</b> 1:22 22:5 23:1<br>42:10 165:11<br>166:19 170:7<br>255:8,16 256:1,19<br>267:9 369:22<br><b>h.b.</b> 16:9<br><b>half</b> 346:6 365:9<br><b>halfway</b> 307:20<br>308:10<br><b>hallandale</b> 199:14<br><b>hand</b> 84:21 166:6<br>170:12 197:11<br>294:20<br><b>handful</b> 197:24<br>220:20<br><b>handle</b> 60:19<br>67:16 112:24<br>229:19<br><b>handled</b> 91:21<br><b>handlers</b> 232:20<br><b>handles</b> 247:22<br><b>hands</b> 122:24<br>137:14 | <b>handy</b> 163:1<br>188:12,16<br><b>hang</b> 163:4<br><b>happen</b> 94:10<br>97:23 111:18,19<br>260:6 347:15<br><b>happened</b> 150:17<br>151:6 157:3 249:6<br>249:17 312:10<br><b>happening</b> 97:22<br>106:9,14<br><b>happy</b> 191:18<br>212:19 213:6<br>221:13,15<br><b>hard</b> 33:7 106:11<br>188:14 308:2,5<br>334:7 362:24<br><b>harder</b> 298:12<br><b>harm</b> 171:2<br><b>hart</b> 302:3,18<br><b>hart's</b> 302:1,9<br><b>harvard</b> 65:12<br>197:22 203:20<br><b>hate</b> 42:9<br><b>hattiesburg</b> 2:10<br><b>hbc</b> 6:4 12:4 15:17<br>51:21 167:9<br><b>hcp</b> 14:12<br><b>hdma</b> 113:23<br><b>hdqtrs</b> 8:5<br><b>he'll</b> 273:16<br>290:24<br><b>head</b> 42:19 55:4<br>85:25 93:10<br>104:24 105:1<br>115:17 129:19,23<br>130:12 183:13<br>282:19<br><b>header</b> 283:24<br><b>heading</b> 191:24<br>192:8,15 199:21 | <b>headings</b> 330:18<br><b>headquarters</b><br>78:24 79:25 83:13<br>97:2 227:13<br>276:10<br><b>health</b> 172:11<br>356:22<br><b>hear</b> 27:10 86:21<br>106:11 117:13<br>119:3,4,20 138:18<br>160:24,25 189:11<br>207:9 253:14<br>290:2 358:14<br><b>heard</b> 27:21 56:11<br>74:22,25 129:12<br>169:9 203:6<br>364:17<br><b>hearing</b> 66:5 78:8<br>78:9,17,20 116:12<br>305:6 337:15<br>369:13<br><b>heather</b> 18:10,14<br>18:18,22 19:6,10<br>19:14,18,22 20:6<br>20:10 287:1,4<br>290:9,20 291:6<br><b>heavy</b> 125:1<br><b>height</b> 126:7,20<br><b>held</b> 34:8 71:3<br>260:8,12,17,22<br>264:18,23 265:18<br>312:20 355:6,14<br><b>help</b> 37:19,21,22<br>38:4,5,6 119:6<br>305:23<br><b>helped</b> 93:2<br><b>helpful</b> 252:3<br>296:2<br><b>helping</b> 124:5<br><b>henry</b> 9:4 |
|--|--|---|---|

|   |  |   |  |
|---|--|---|--|
| <b>hey</b> 72:19 149:5<br><b>high</b> 33:3,10 90:8<br>123:19 125:7<br>129:8 130:6 135:9<br>136:6 137:11<br>151:4 153:3 315:6<br><b>higher</b> 82:12<br>126:11 128:18<br>131:15 134:24<br>135:9,9 140:14<br>194:23<br><b>highest</b> 192:11<br><b>highlighted</b> 295:9<br><b>highly</b> 1:17 117:14<br>130:6 235:7 249:3<br>361:9<br><b>hiland</b> 323:16<br>324:8 325:10<br>334:24<br><b>hills</b> 10:23<br><b>hired</b> 227:15<br><b>hissy</b> 363:23<br><b>historic</b> 230:20<br><b>historical</b> 229:9<br><b>history</b> 230:25<br>231:3<br><b>hold</b> 34:6,15 35:18<br>54:15 105:7 139:2<br>185:4 214:6 224:7<br>273:4 304:7<br>307:19 312:18<br>313:1 358:1,2<br><b>holders</b> 67:4<br><b>holding</b> 70:18<br>258:19<br><b>holds</b> 315:8<br><b>home</b> 144:5 198:7<br><b>hon</b> 1:7<br><b>honest</b> 138:8<br><b>hope</b> 281:1,1<br>332:6,6 | <b>hopefully</b> 96:24<br><b>hoping</b> 232:9<br><b>hospice</b> 342:9<br><b>hotel</b> 24:13 362:23<br><b>hour</b> 243:14,19<br>359:25 361:24<br>365:1,3,9,15,15<br><b>hours</b> 15:21 58:10<br>58:12 241:3,6<br>242:4,19,22<br>340:16 358:8<br>359:12,13 360:4<br>364:21 367:25<br><b>houston</b> 4:8,10<br><b>how's</b> 185:5<br><b>hubbard</b> 7:22<br>181:10<br><b>huge</b> 153:21<br><b>huh</b> 204:4<br><b>humane</b> 363:21<br><b>humanly</b> 32:19<br><b>hunch</b> 316:9,10<br><b>hundred</b> 32:14<br>42:11,11 54:7<br>55:7 57:16 85:18<br>89:5 115:6 116:2<br>119:16 140:1,2,7,7<br>140:9 148:21<br>149:25 172:6,17<br>172:20 176:8<br>177:10,13,14,16<br>180:10 187:10,16<br>187:17,22,23<br>188:1,5,6,21,22,24<br>189:3,21 195:6,7<br>195:22 200:22<br>201:3,4 202:16,17<br>206:12 226:20<br>256:2,3 297:16<br>315:11,11,19,19<br>316:1,1,2,2 | <b>hundreds</b> 25:23<br>65:24<br><b>hydrocodone</b><br>15:17 101:15<br>115:2 118:20<br>120:1,13 121:1,4<br>123:5 153:17<br>251:14,15,19,20<br>251:22 252:19<br>341:12 343:19,21<br>343:25 345:19<br>354:12<br><b>hydromorphone</b><br>252:22<br><b>hypothetical</b> 96:6<br>96:9,13,23 97:15<br>97:24 109:22<br>110:21 111:1,6,8<br>111:25 112:1,3<br>117:4,20,22 134:7<br>342:3,8<br><b>hypothetically</b><br>94:18 112:4 175:5 | 214:9 273:3<br>286:16 287:11,18<br>288:1,6,12,15,20<br>288:25 289:5,10<br>289:15 295:24<br>304:17<br><b>identified</b> 23:21<br>48:11 52:11 81:1<br>91:14 116:24<br>117:8 135:24<br>256:16<br><b>identify</b> 43:5<br>90:15,20,25<br>113:13 117:16<br>175:13 200:6<br>274:21 323:13<br>324:10 331:15<br>333:10 335:12<br><b>identifying</b> 162:10<br><b>ignore</b> 236:20<br><b>ignored</b> 178:12,15<br>179:13<br><b>ii</b> 251:13 252:15<br>252:17,18,20,23<br>253:1,3,4,5,6,7,11<br>254:10<br><b>iii</b> 251:19,23<br><b>iiis</b> 228:19<br><b>iis</b> 139:12 228:17<br>228:18,20 253:22<br><b>illegal</b> 43:1 107:25<br>108:5 145:14<br><b>illegally</b> 43:7<br><b>illegitimate</b> 43:2<br>153:9 209:19<br><b>illicit</b> 138:22,24<br>153:3 200:7 211:8<br>355:23<br><b>illinois</b> 5:19 7:23<br><b>illustrate</b> 121:9 |
|   |  | <b>i</b>  |  |
|   |  | <b>i.e.</b> 44:1<br><b>idea</b> 42:6 166:24<br>167:2,4 207:24<br>210:4,17 234:17<br>239:17 240:6<br><b>ideally</b> 279:16<br><b>ideas</b> 114:2<br><b>identification</b><br>31:16 51:8 52:24<br>57:21 63:23 86:8<br>99:7 114:19<br>119:24 128:10<br>130:17 133:3<br>134:18 138:2<br>141:16 150:5<br>168:10 184:24<br>190:5 196:21   |  |

[immediately - inspector]

Page 31

|  |  |  |   |
|--|--|--|---|
| <b>immediately</b> 77:2<br>137:12 308:20     | 309:7,10,12<br>352:24 370:13                   | <b>indiana</b> 7:4 347:24                    | <b>information</b> 29:1<br>35:4,6,7 52:3,3    |
| <b>imperative</b> 32:24                      | <b>includes</b> 166:25                         | <b>indicate</b> 120:17<br>138:20 276:14      | 56:25 93:1 101:22                             |
| <b>implementation</b><br>317:7,21            | 199:13   | 292:10 317:10                                | 101:23 109:24                                 |
| <b>implemented</b><br>99:24 327:22           | <b>including</b> 24:8<br>32:15 45:9 51:2       | 328:18                                       | 126:25 142:6                                  |
| <b>implementing</b><br>318:3                 | 94:16 108:19                                   | <b>indicated</b> 98:16<br>120:14 272:9       | 147:16,24 151:6                               |
| <b>implies</b> 65:7                          | 158:17 162:18                                  | 322:18 343:9                                 | 157:15 158:15                                 |
| <b>importance</b><br>230:23 281:24           | 164:21 166:2                                   | 359:14 360:10                                | 180:6 195:14                                  |
| <b>important</b> 33:14<br>68:13,16,17        | 319:22 365:18                                  | <b>indicates</b> 136:23                      | 210:2,20 249:9                                |
| 148:15 159:11,14                             | <b>income</b> 54:10                            | <b>indicating</b> 341:21<br>370:13           | 269:24 274:11                                 |
| 159:19,23 177:21                             | <b>incorporated</b><br>372:12                  | <b>indication</b> 50:6<br>106:8,13 281:22    | 292:17 306:1                                  |
| 177:25 178:3                                 | <b>incorrect</b> 329:17<br>330:15 331:8        | <b>indications</b> 154:20<br>329:2 349:9     | 322:22 329:4                                  |
| 179:6 217:12,15                              | <b>increase</b> 50:8<br>94:23 95:14,17         | <b>indicative</b> 313:19<br>318:2,14 325:4,7 | 344:17,18 350:16                              |
| 218:3,5 228:8                                | 97:12 139:24                                   | 337:8 338:1                                  | 352:15 353:1                                  |
| 230:9,12 231:3                               | 140:3,6,9 277:25                               | 354:16                                       | 354:15  |
| 281:18 360:19                                | 313:17,24 314:2,6                              | <b>indicator</b> 125:11<br>135:10            | <b>informational</b><br>123:3                 |
| <b>imposed</b> 334:8                         | 314:9,11,13,14,18                              | <b>indicted</b> 200:14<br>204:11             | <b>informed</b> 140:19<br>216:12 312:6,8      |
| <b>impressed</b> 298:8                       | 314:21 315:13,22                               | <b>indictment</b> 17:13<br>99:18 197:8,16    | 350:4,9 351:2,13                              |
| <b>improper</b> 113:20<br>361:9              | 315:23,25 316:13                               | 198:1,22 199:20                              | <b>ingredients</b> 49:6                       |
| <b>improperly</b> 211:3                      | 318:14   | 202:15,22 203:25                             | <b>initials</b> 343:1                         |
| <b>imputing</b> 257:17                       | <b>increases</b> 96:18<br>314:25 315:2         | 204:2 206:23                                 | <b>initiative</b> 302:21<br>312:3,19,23 313:1 |
| <b>inappropriate</b><br>41:10                | <b>increasing</b> 105:6                        | 207:19 209:3                                 | <b>input</b> 92:24<br>305:16                  |
| <b>incarcerated</b><br>204:11                | <b>independent</b> 34:21<br>35:1,5,6,15 108:3  | <b>individual</b> 171:13<br>262:1 263:14     | <b>inquiry</b> 148:1                          |
| <b>incidental</b> 26:2                       | 150:15 152:1                                   | <b>individuals</b> 207:21                    | <b>inspect</b> 80:8 87:2<br>311:4             |
| <b>include</b> 50:1 58:15<br>61:19 136:18,19 | 265:8 266:10                                   | <b>industry</b> 123:7<br>318:9               | <b>inspected</b> 85:14                        |
| 330:5 351:18                                 | <b>independents</b><br>156:11                  | <b>ineffective</b> 117:14                    | <b>inspecting</b> 113:15                      |
| 352:4 367:12                                 | <b>index</b> 13:1,11 14:1<br>15:1 16:1,20 17:1 | <b>inference</b> 192:21                      | <b>inspection</b> 73:19<br>74:7 75:13,17,21   |
| <b>included</b> 51:18<br>117:24,25 159:23    | 18:1 19:1 20:1                                 | <b>inform</b> 351:7                          | 79:8 81:19 215:4<br>347:24                    |
| 162:9 224:23                                 | 21:1,9   | <b>informants</b> 60:20                      | <b>inspections</b> 67:7<br>73:20 81:1 83:7    |
| 234:19 295:15                                | <b>indexed</b> 14:12<br>120:1                  |  | 159:6 348:10,17<br>348:20,22                  |
| 307:17 308:11                                | <b>indexes</b> 168:25                          |  | <b>inspector</b> 83:9,25<br>85:7 122:9 126:23 |

[inspector - james]

Page 32

|  |  |   |   |
|--|--|---|---|
| 135:8<br><b>inspectors</b> 74:5<br>75:11 298:8<br><b>instance</b> 278:4<br><b>instances</b> 77:12<br><b>instituted</b> 327:18<br><b>instruction</b> 28:19<br>28:20 29:16,23<br>41:5<br><b>instructions</b> 28:16<br>269:4,12<br><b>insufficient</b> 299:23<br><b>insure</b> 211:24<br><b>integrated</b> 320:8<br><b>intent</b> 100:5<br>361:11<br><b>intentional</b> 194:2<br>247:1<br><b>intentions</b> 175:4<br><b>interaction</b> 348:16<br><b>interactions</b><br>229:18<br><b>interest</b> 100:1<br>147:21 191:19<br>320:2,11 321:3<br>322:14,19 334:16<br><b>interested</b> 328:6<br>369:17<br><b>interesting</b> 201:25<br>278:21<br><b>interestingly</b><br>153:6<br><b>internal</b> 49:1<br><b>internally</b> 297:18<br><b>internet</b> 53:24<br>114:3 269:25<br>312:12,15<br><b>internet.com</b><br>10:25<br><b>interpretation</b><br>89:6 277:5 | <b>interrogator</b> 29:5<br><b>interrogatories</b><br>295:4<br><b>interrupt</b> 118:25<br><b>introduce</b> 168:3,5<br><b>introduced</b> 99:15<br>303:16<br><b>introducing</b> 190:8<br><b>invent</b> 311:3<br><b>inventory</b> 73:5<br><b>inverse</b> 318:15<br><b>investigate</b> 44:22<br>92:2 122:20<br>148:25 321:25<br>322:6<br><b>investigated</b><br>125:10 135:21<br>152:23 227:3,18<br>320:11,16 321:3<br><b>investigates</b> 145:3<br><b>investigating</b><br>60:25 139:5<br>151:15<br><b>investigation</b><br>72:17,18 73:3,18<br>73:19 75:8 76:7<br>79:12 81:21 83:18<br>97:22 98:9,13,17<br>99:1,25 100:6<br>135:25 139:9<br>178:16 214:14<br>215:3 217:25<br>218:9 219:7<br>221:21,24 223:18<br>224:18 231:13,21<br>231:25 232:3<br>238:18 239:8<br>248:24 278:23<br>279:20,23 351:18<br>352:4 | <b>investigations</b><br>67:1,3 71:9 72:11<br>72:24 73:15 83:7<br>147:15 211:17,21<br>211:23 212:4,9<br>217:23 218:8,9,22<br>226:6 249:15<br>250:6,11 320:19<br><b>investigator</b> 15:6<br>34:9,18 35:21<br>36:24 53:19 59:17<br>59:21 60:11,16,24<br>61:6 62:16 64:20<br>66:11 67:20 71:25<br>79:1 80:21 82:2<br>88:7 129:10<br>133:18 138:4<br>182:18 212:5<br>215:5 216:17<br>217:10 227:2,18<br>231:21 269:18<br>278:22 319:20<br><b>investigators</b><br>36:23 61:25 67:22<br>72:23 144:19<br>200:6 212:23<br>213:14 214:12<br>215:13 216:2<br>217:1,21<br><b>invoice</b> 15:20<br>241:1 242:4<br><b>invoices</b> 57:23<br>58:14<br><b>invoke</b> 74:13,23<br><b>invokes</b> 84:10<br><b>involve</b> 335:18,22<br><b>involved</b> 98:8<br>138:15 143:6<br>155:14 199:10<br>211:13 336:3,7 | <b>involvement</b><br>231:20<br><b>involves</b> 348:22<br><b>involving</b> 346:19<br><b>irr</b> 350:6<br><b>issue</b> 15:9 37:1<br>74:11 77:14 80:2<br>81:1,19 84:5,7<br>102:20,24 104:3<br>124:6 129:1<br>134:21 136:5<br>219:25 282:2<br>292:10 361:20<br>367:19<br><b>issued</b> 78:25<br>106:24 138:24<br>159:12 208:22<br>220:2<br><b>issues</b> 80:25<br>100:19 130:2<br>151:25 159:8<br>218:4,8 228:8<br>291:22 338:2<br><b>item</b> 274:24 275:7<br><b>items</b> 89:23 275:1<br>275:6 |
|  |  |   | <b>j</b>  |
|  |  |   | <b>j</b> 2:6 3:14 5:5,15<br>14:6,9,18 335:21<br><b>jack</b> 141:2,19<br><b>jaffe</b> 10:21<br><b>jail</b> 151:9 204:5<br><b>james</b> 1:16 13:4,21<br>15:6,21 22:4<br>23:10,18 24:1<br>138:5 245:8 303:6<br>303:11 338:22<br>339:2 357:17,22<br>359:2,7 368:8,11<br>370:8 371:4,9<br>372:4,13 373:20  |

[janet - knight]

Page 33

|   |  |  |  |
|---|--|--|--|
| <b>janet</b> 302:9<br><b>january</b> 14:23<br>15:11 99:15<br>139:25 284:9<br>287:20<br><b>jay</b> 12:16<br><b>jeff</b> 11:16<br><b>jefferson</b> 369:5<br><b>jersey</b> 11:21<br><b>jfalduto</b> 11:24<br><b>jimmy</b> 329:7<br><b>jjaffe</b> 10:25<br><b>jlichter</b> 12:23<br><b>jmarcus</b> 6:18<br><b>jmetts</b> 4:23<br><b>job</b> 53:7,7 55:21<br>55:24 56:16 82:3<br>82:5 109:11<br>122:12 127:10<br>177:24 217:9,21<br>296:25 324:24<br>325:16<br><b>jog</b> 305:23<br><b>joined</b> 62:1<br><b>joining</b> 366:20<br><b>jonathan</b> 6:8<br>10:21<br><b>jones</b> 5:17<br><b>jonesday.com</b><br>5:21,22<br><b>jonesday.com.</b><br>338:19<br><b>joseph</b> 15:25<br><b>jr</b> 3:14<br><b>jralph1972</b> 141:20<br><b>juan</b> 3:19<br><b>judge</b> 28:16<br>116:20 117:1<br><b>judgments</b> 44:16<br><b>julia</b> 4:15 | <b>july</b> 15:25 289:1<br>296:12,16 329:20<br><b>jump</b> 289:18<br><b>june</b> 1:18 23:9,16<br>53:9 59:3 288:22<br>368:12,14 370:4<br><b>jurisdictions</b><br>232:16 280:25<br>286:11<br><b>jury</b> 28:13 36:10<br>37:9 54:16 65:2<br>78:12 110:4<br>115:23 116:12,19<br>117:1,5,12 119:4<br><b>jury's</b> 48:5 91:25<br><b>justifiable</b> 132:11  | <b>kennedy</b> 2:17<br><b>kept</b> 346:1<br><b>kevin</b> 18:5 274:4<br><b>key</b> 80:10<br><b>kill</b> 51:16<br><b>killed</b> 157:2<br><b>kim</b> 290:20<br><b>kimberly</b> 18:10,14<br>18:18,22 19:6,10<br>19:14,18,22 20:6<br>20:10 286:22<br>290:9<br><b>kin</b> 369:16<br><b>kind</b> 38:3 41:3<br>44:14 61:6 74:25<br>76:7,11 86:3<br>98:24 119:5 126:7<br>127:6 132:10<br>147:3,4 154:14<br>157:15 170:25<br>171:8 182:7 185:9<br>198:19 216:21<br>218:12 239:7<br>261:3 263:25<br>270:2 277:4 305:2<br>309:15 324:25<br>326:11 337:25<br>340:20 346:19<br>348:15<br><b>kinds</b> 26:13 76:8<br>92:6<br><b>kneller</b> 237:10<br><b>knew</b> 120:10<br>126:23 128:13<br>129:25 130:5<br>141:11 144:20,24<br>233:21<br><b>knight</b> 2:5 24:17<br>24:21 29:18,24<br>32:11,21 33:11,19<br>34:10 35:22 36:4 | 36:13 41:9 44:9<br>45:14,19 47:7<br>53:20 54:2 55:12<br>56:8,11,14 57:8,14<br>58:2 59:1 68:2<br>74:12,16,19,21<br>75:1 79:11,19<br>80:18 81:14 82:9<br>82:19,23 84:9<br>85:20 86:12 89:21<br>92:15,22 93:13,21<br>94:13 95:2,19<br>97:14 103:7<br>106:10 109:1,21<br>110:20 111:23<br>114:10 116:4<br>118:10 120:15,21<br>121:7 123:20<br>124:17 128:3<br>129:2,15 130:3<br>131:1 132:19<br>134:2 136:9 137:4<br>138:18 139:7<br>141:3 146:11,15<br>147:5 149:22<br>150:19,24 154:7<br>155:16,23 156:14<br>157:11,20 158:3<br>159:1,18 160:5<br>161:4,8,12 163:3,7<br>163:11,14,17,24<br>165:24 174:15<br>175:16,25 176:14<br>176:24 177:5,12<br>178:6 179:17<br>180:4 184:3 186:5<br>188:15 196:8<br>205:1,10,21<br>206:18 207:8<br>212:25 214:15<br>218:10,24 219:15 |
|   | <b>k</b>   |  |  |
|   | <b>kaitlyn</b> 10:5<br><b>karn</b> 20:19<br><b>kate</b> 160:23<br>176:15,18 224:11<br>232:6<br><b>kate's</b> 362:16<br><b>kate.swift</b> 7:25<br><b>katherine</b> 7:18<br><b>kathleen</b> 2:5,12<br>24:17 362:16<br>370:5<br><b>keekhoff</b> 10:11<br><b>keep</b> 41:7 54:23<br>75:23 163:6 184:3<br>188:12,16 217:6<br>219:16 220:11<br>221:2 241:25<br>255:5 283:7<br>300:11,12 320:24<br>340:13 346:11<br>359:20<br><b>keeping</b> 189:20<br><b>keith</b> 20:18 296:11<br>297:2 |  |  |

[knight - lake]

Page 34

|                          |                    |                        |                          |
|--------------------------|--------------------|------------------------|--------------------------|
| 220:7,19,22              | 52:6 54:5,5,9,14   | 217:5 218:11           | <b>known</b> 74:1,3 94:5 |
| 221:11 222:12,15         | 54:21 55:10,23     | 219:13 227:25          | 102:3 194:2              |
| 223:10 224:21            | 56:17 58:11 61:10  | 233:19 235:20          | <b>knows</b> 82:4        |
| 225:8 226:9              | 63:15 66:22 67:15  | 236:2 240:21           | <b>kyle</b> 14:18        |
| 227:22 230:6,16          | 72:4 74:17 76:2    | 242:19,20 244:19       | <b>I</b>                 |
| 231:17 232:23            | 77:7 79:17 80:12   | 247:1 249:11,24        | <b>I</b> 22:1            |
| 234:21 236:10,17         | 80:15 81:3 83:19   | 250:18 261:5           | <b>labeled</b> 232:5,15  |
| 238:2,9 240:9,18         | 84:8,19 85:18      | 263:3 266:9 267:2      | 273:10                   |
| 240:23 241:7             | 87:25 89:11 91:9   | 267:5,13,15,18,22      | <b>lack</b> 45:13 70:12  |
| 242:6 243:1              | 93:11 95:7,8 96:2  | 268:3 271:1            | 239:23 318:14            |
| 246:25 247:3             | 97:2 100:17,18     | 277:12 289:25          | 344:23 345:13            |
| 249:19 259:22            | 103:16 109:11      | 294:5 295:14           | <b>ladd</b> 8:17         |
| 262:7,13 263:16          | 110:3,13 112:15    | 298:2 299:15           | <b>ladder</b> 78:6,14    |
| 264:13 265:4             | 113:16 114:25      | 304:12 309:3           | <b>lake</b> 13:19 14:14  |
| 267:25 269:15            | 116:19 120:5       | 311:13 314:15          | 14:22 15:10,18           |
| 270:11 272:24            | 121:21,23,25,25    | 320:6 322:24           | 16:16 25:3 41:14         |
| 273:5,8,14,20,23         | 122:11 123:18      | 327:22 328:15          | 42:4 50:9 97:3           |
| 279:5 282:17             | 124:8,14,25 125:4  | 332:1 337:2            | 105:13 107:6             |
| 283:6 284:19             | 127:1 129:11,17    | 341:16,24 342:4,8      | 115:3 117:11             |
| 285:16 289:21,23         | 130:5,18 131:13    | 342:9,13 343:7,23      | 118:8 120:4 121:5        |
| 290:10,23 292:24         | 131:23 133:22      | 346:3,8 347:4,20       | 133:9 136:4 146:5        |
| 293:3 295:1 296:3        | 141:5 142:13,23    | 348:24 350:21          | 151:3 156:21             |
| 296:8,22 302:24          | 143:20,21,22       | 351:6 356:14           | 164:7 173:5              |
| 304:21 308:4             | 145:4,5 146:12,16  | 358:4 360:3            | 174:14,21 175:14         |
| 309:13 316:15            | 147:20 148:17      | 361:13 362:17,24       | 179:7,24 183:16          |
| 317:23 318:4             | 149:7 150:12,17    | 364:13 365:7,8,20      | 183:20 184:1,8,14        |
| 322:7 324:12             | 151:4,10,20 154:8  | 365:21 366:8,13        | 184:18 185:11,21         |
| 326:21 327:6             | 154:11,17 155:12   | 366:24                 | 195:20 196:3             |
| 330:16,25 331:10         | 155:17,24 157:5    | <b>knowingly</b> 67:20 | 206:10,17 207:7          |
| 333:18,23 337:12         | 159:22 166:10      | 334:5                  | 207:15 208:17            |
| 338:15 344:5             | 170:16 173:20,23   | <b>knowledge</b> 36:18 | 209:14 210:11            |
| 347:9 348:3 351:5        | 176:22 178:14      | 36:22 91:13 93:3       | 228:13,24 229:5          |
| 353:5 363:1,14           | 179:2,9 183:10     | 93:15,17,23 94:1       | 239:3,14 241:6           |
| 364:1 366:6 370:5        | 189:18,24 193:20   | 95:20 96:14 146:8      | 242:14 243:6,18          |
| <b>know</b> 24:24 25:4,6 | 194:9,14,18,19,24  | 146:10,14 147:1        | 244:17 254:24            |
| 25:7,7,11 26:22          | 203:8,23 204:1,2,2 | 147:10 158:15          | 255:25 267:5             |
| 27:12,17 31:24           | 204:4,6,7,24       | 203:14 206:19          | 272:1,6,7,14,16          |
| 33:5,7 36:15,16          | 205:20,22 206:7    | 209:9 210:24           | 281:19 311:17,21         |
| 39:24 40:6,12            | 206:14 207:2,3     | 218:14 240:10          | 314:1 335:3 336:4        |
| 42:10,22 43:3,4          | 209:13,18 210:10   | 302:13 356:15          | 341:10 343:15            |
| 47:21,23 49:23           | 213:5,17 216:9     |                        | 352:15 353:2,8,12        |

|  |   |   |   |
|--|---|---|---|
| 353:16 354:13,25<br><b>language</b> 281:11<br><b>lanier</b> 4:7<br><b>lanierlawfirm.com</b><br>4:12<br><b>large</b> 23:4 85:25<br>198:7 205:4<br><b>larger</b> 148:23<br><b>largest</b> 171:16<br>183:12 188:19<br>189:22 195:20<br>206:9<br><b>late</b> 61:16 62:7<br><b>latest</b> 228:23<br><b>laura</b> 1:22 22:5<br>23:1 189:13<br>369:22<br><b>law</b> 2:7,8,16 3:6<br>3:15 4:6,7,16 5:6<br>5:16 6:10 7:8,19<br>8:10,18 9:6 11:17<br>12:8,17 31:10<br>60:16 62:10 81:24<br>81:24 84:11<br>258:12 347:18<br><b>lawfully</b> 41:21<br>43:11 159:17<br><b>lawsuit</b> 28:23<br>336:17<br><b>lawyer</b> 240:22<br><b>lawyers</b> 38:6<br>40:18 167:5<br>178:11 179:15<br>180:2 227:16<br>241:1<br><b>layers</b> 35:3<br><b>laying</b> 146:21<br><b>lcr</b> 369:24<br><b>lead</b> 70:13 182:18<br><b>leading</b> 22:10<br>123:6 243:6 | <b>leads</b> 80:21<br><b>learning</b> 324:25<br>325:19<br><b>leave</b> 360:14,17<br><b>led</b> 98:18<br><b>left</b> 53:8 160:19<br>168:16 219:25<br>220:21 359:11<br>361:1 365:1,4<br><b>legal</b> 11:8 370:1<br>373:1<br><b>legend</b> 131:13<br><b>legislation</b> 99:12<br><b>legitimate</b> 92:13<br>108:10 126:10<br>128:13 149:1<br>153:9 209:20<br>239:18 240:8<br>342:14<br><b>leo</b> 98:8,11<br><b>leon</b> 3:17<br><b>lesser</b> 94:22<br>137:20<br><b>letter</b> 73:22 77:20<br>77:21 78:4 191:9<br>302:20 335:21<br>370:19<br><b>letters</b> 111:13<br>292:6 300:7,10,13<br>300:14,22 301:7<br>301:20 302:15<br><b>letting</b> 176:22<br><b>level</b> 35:11 44:8,13<br>46:2 59:20,24<br>62:11 77:10,18,19<br>77:19 78:11,18,19<br>90:8 92:9,11 96:8<br>104:3 108:25<br>109:13,20 110:10<br>125:20 126:16,21<br>127:2 130:6 | 132:10 159:7<br>174:12,16 175:7<br>175:13 257:22<br>259:11 261:10<br><b>levels</b> 78:14 79:22<br>85:5 103:21<br>104:12 106:18<br>127:3<br><b>levin</b> 4:17<br><b>levinlaw.com</b> 4:22<br>4:23<br><b>lewis</b> 8:11,19<br>245:14 272:21<br><b>license</b> 67:2,4<br>183:7 311:21<br>346:25 369:23<br><b>licensed</b> 35:9<br>211:12 248:18<br>310:6<br><b>licenses</b> 145:19<br>311:11<br><b>licensing</b> 257:7<br><b>lichter</b> 12:16<br><b>life</b> 365:18<br><b>light</b> 31:25 35:16<br>359:21<br><b>lightly</b> 188:25<br><b>liked</b> 323:7,24<br>324:3<br><b>limit</b> 321:17<br>327:18<br><b>limited</b> 62:4 69:3<br>142:1 156:17<br>158:6 192:12<br><b>limiting</b> 328:24<br><b>limits</b> 334:7<br><b>linden</b> 86:16<br><b>line</b> 128:12 217:19<br>221:19 262:24<br>296:12 370:13<br>372:7 373:3 | <b>lined</b> 362:2<br><b>lines</b> 145:18<br>215:12<br><b>list</b> 146:19 171:11<br>172:1,10,24 176:9<br>177:11 180:10,17<br>181:23 182:6<br>199:10 200:13<br>202:1 203:22<br>206:8 246:10<br>267:7,8,9 269:20<br>270:1,7 272:10,10<br>275:21 299:5,6<br>301:11 308:18<br>335:6,9,15 336:17<br>352:8<br><b>listed</b> 38:25 39:19<br>77:15 98:14 127:9<br>197:17 202:7<br>207:21 246:11<br>252:5 255:3<br>274:18 276:1<br>280:16,23 281:14<br>282:16 283:12<br>284:24 286:12<br>295:5 297:5<br>307:16 336:3<br>349:15 372:7,17<br><b>listen</b> 28:24 240:3<br><b>listening</b> 112:2<br><b>listing</b> 38:17 372:7<br><b>lists</b> 169:22 352:5<br><b>literally</b> 27:3<br>49:19 73:4 99:2<br>155:5 216:23<br><b>litigation</b> 1:9<br>10:14 23:20 33:3<br>39:3 53:12 54:24<br>55:17 56:2 116:24<br>127:12 169:14<br>208:22 228:7 |
|--|---|---|---|

|   |   |   |  |
|---|---|---|--|
| 233:6,16 247:9<br>251:17 261:4<br>303:19 332:10<br>337:16,23,25<br>370:6 371:3 372:3<br><b>little</b> 34:22 37:1<br>53:6 71:7,7 75:6<br>76:10 82:15 86:3<br>92:23 96:24,24<br>101:6 115:23<br>121:11 126:19<br>136:2 165:15<br>172:12 176:5<br>177:7,8 189:9<br>211:19 222:13<br>246:9 249:20<br>254:17 257:6<br>275:24 277:21<br>280:21 282:23<br>283:7 303:21<br>312:11 328:13<br>340:18 344:1<br>365:10<br><b>live</b> 360:10<br><b>liverpool</b> 8:7<br>246:12 250:24<br>286:23 287:5<br>291:7<br><b>living</b> 55:15<br><b>livingston</b> 6:6,16<br>13:5 24:5,7,9,23<br>26:7 29:21 30:1<br>31:18 32:13,23<br>33:15,25 34:13,20<br>35:24 36:6,9,25<br>41:12 44:21 45:15<br>45:19 46:6 47:10<br>47:22 48:4 51:9<br>52:25 53:22,25<br>54:11 55:13,19<br>56:17,19 57:10,17 | 57:22 58:3,6<br>59:11 65:8 68:10<br>73:23 75:4,9<br>79:14 80:6 81:2<br>81:23 82:14,19,22<br>83:5 84:5,9,13,18<br>85:23 86:9,12,15<br>90:10 92:5,17<br>93:14,16 94:2,3,17<br>95:4,5,23,24 97:25<br>98:7 99:8 101:6,7<br>101:10,14 103:13<br>104:18 105:1,10<br>105:11 106:10,12<br>107:18 108:13<br>109:4 110:2 111:7<br>112:6 114:13,16<br>114:20 116:6<br>118:12,17,22,23<br>119:8,10,18,25<br>120:18,24 121:10<br>124:7,19 125:16<br>127:24 128:5,7,11<br>129:11,16 130:9<br>130:18 131:4<br>132:24 133:4<br>134:13,19 135:7<br>136:10,16,24<br>137:7 138:3,19<br>139:8,14 141:6,17<br>146:13,18 147:12<br>150:2,6,19,21<br>151:8 154:23<br>155:21,23 156:1,3<br>156:18 157:14,23<br>158:13 159:10,22<br>160:3,8,13 357:24<br>358:4,13 360:15<br>361:2 363:20<br>367:10,16,23 | <b>livingston's</b> 361:6<br><b>llc</b> 5:4 7:5,6,6 10:7<br>10:15 199:14<br><b>llp</b> 6:11 8:11,19<br>9:7 12:9<br><b>loaded</b> 349:2<br><b>local</b> 62:11 157:25<br><b>located</b> 24:11 42:4<br>128:21 133:9<br>196:12 267:3,3,14<br>268:3,9,13<br><b>location</b> 131:22<br>247:22,23<br><b>locations</b> 145:22<br>246:20 249:21<br>258:23 354:5<br><b>locke</b> 9:7<br><b>locked</b> 361:1<br><b>lockelord.com</b><br>9:12<br><b>logic</b> 109:5 110:9<br><b>logo</b> 168:20<br><b>lonesome</b> 153:13<br><b>long</b> 142:13 144:3<br>145:18 194:17<br>215:24 235:18,23<br>243:10 327:15<br>366:19<br><b>longer</b> 66:19,23<br>330:20 346:21<br>365:12<br><b>look</b> 33:12 39:14<br>47:20 53:23 73:17<br>73:19 80:11 88:3<br>89:23 99:9 104:23<br>105:7 107:24<br>108:3,8,16 110:5<br>112:8 113:1<br>115:15 118:13<br>122:1,22 123:3,11<br>123:12,14,15,23 | 123:25 124:1,2,3,3<br>124:4,9 126:19<br>135:3,9,12 136:3<br>137:17 141:13<br>145:4 154:13<br>155:19 156:22<br>159:8,8,15,20<br>171:1 174:1,8<br>176:7 178:4<br>183:25 184:7<br>195:11,11 200:11<br>202:2,14 206:22<br>210:6 214:12<br>215:6 216:2,8,9,18<br>217:3 219:23<br>228:15 230:25<br>231:15 250:2,9,19<br>252:3 253:9<br>254:16,24 255:24<br>270:14 271:23,25<br>272:20,25 276:1<br>277:21 279:6,25<br>280:6 283:19<br>285:8 286:5,14,20<br>286:21 292:24<br>293:23 294:8<br>296:1 297:12<br>298:3,12,19 299:2<br>299:14 302:3,22<br>302:25 316:20,22<br>316:24 328:11<br>357:25 361:3<br><b>looked</b> 39:4,6<br>96:19 100:19<br>127:6 154:3,9,11<br>156:5,7,10 178:21<br>183:15 185:16<br>196:7 204:13<br>205:2,13 206:3,8,9<br>211:7 234:7<br>251:18 267:21 |
|---|---|---|--|

|   |   |  |   |
|---|---|--|---|
| 275:16 291:11,25<br>295:11 298:16<br>300:24 301:11<br>318:9 321:9 333:9<br>353:19<br><b>looking</b> 37:24<br>39:15 40:3 42:9<br>51:24 99:21 105:9<br>105:13 119:2<br>122:2,7 132:12<br>133:24 134:9<br>135:23 136:25,25<br>137:6,9 149:12<br>152:25 153:24<br>154:2,19 155:10<br>171:8 177:17<br>185:10 191:7<br>195:19 201:24<br>236:4 241:12<br>250:19 256:18<br>276:19 281:17<br>292:4 294:10<br>315:23 317:1<br>318:19 330:1,24<br>345:2 349:9 354:5<br><b>lookout</b> 140:20<br>145:18 149:5<br><b>looks</b> 118:25<br>121:13 141:19<br>155:13,14 290:2<br><b>lord</b> 9:7<br><b>lose</b> 183:7<br><b>loss</b> 70:14<br><b>lost</b> 144:18<br><b>lot</b> 35:4 40:14<br>52:17 62:8 121:25<br>145:20 146:20<br>241:9,23,25 344:2<br>353:17<br><b>lots</b> 146:1 220:10 | <b>low</b> 132:22<br><b>lower</b> 63:7 64:4<br>132:22<br><b>lowest</b> 42:16 77:10<br>77:19<br><b>lpa</b> 2:17 9:17<br><b>lunch</b> 142:23<br>232:7,12 236:16<br><b>luxenberg</b> 3:7<br><b>m</b><br><b>m</b> 7:7,10,18 68:25<br><b>ma'am</b> 160:25<br>252:16,21 262:13<br>269:1 280:13<br>315:15<br><b>madam</b> 370:10<br><b>maddie.brunner</b><br>9:12<br><b>madeleine</b> 9:5<br><b>mailed</b> 301:7<br><b>main</b> 38:3 49:6<br>181:10<br><b>maintain</b> 13:17<br>70:25 291:21<br>313:19 335:11<br><b>maintained</b><br>278:19 280:5<br><b>maintenance</b><br>69:10 70:7,14,14<br>102:19 104:7<br>167:13 175:3<br>178:25 254:13<br>258:8 259:4,14<br>260:2 318:7 344:8<br><b>majority</b> 63:18<br><b>makeshift</b> 272:23<br><b>making</b> 53:18 54:6<br>103:19 248:12<br>296:25 332:2<br>333:21 364:15<br>365:11 | <b>mallinckrodt</b><br>65:13,17 167:7<br>260:8,12<br><b>management</b> 35:3<br>35:3 60:6 61:15<br>73:5 76:1,6,17,24<br>78:24<br><b>manager</b> 60:1<br>78:9,17 237:10<br>274:7 276:8<br><b>managers</b> 237:3<br><b>manages</b> 258:22<br><b>manner</b> 81:9<br>154:9 261:4<br><b>manual</b> 71:25 72:3<br>72:8 113:10<br>232:21 321:19<br>326:5 327:9,11,15<br><b>manufacturer</b><br>65:18 148:9<br>317:14<br><b>manufacturers</b><br>92:24 108:17<br>335:10<br><b>manufacturing</b><br>91:18 92:7 94:11<br>96:10<br><b>map</b> 64:11 82:15<br><b>mapping</b> 353:18<br>354:5<br><b>maps</b> 353:14<br><b>march</b> 14:7 51:13<br>228:20 284:9<br>288:4<br><b>marcus</b> 6:7,8,11<br>6:16,17,17,18,19<br>12:9,14<br><b>marion</b> 297:8<br><b>mark</b> 184:21<br>304:11,14 306:8<br>359:25 | <b>marked</b> 31:15<br>51:7 52:23 57:20<br>63:22 86:7 99:6<br>114:18 119:23<br>128:9 130:16<br>133:2 134:17<br>138:1 141:15<br>150:4 163:1 168:9<br>184:23 190:4<br>196:20 198:2<br>214:8 235:7 273:2<br>286:15 287:10,17<br>287:25 288:5,11<br>288:14,19,24<br>289:4,9,14 295:23<br>304:16 305:9<br>307:5<br><b>market</b> 8:12 15:9<br>98:3 134:20 136:7<br>136:14 171:17,20<br>173:4,9 176:10<br>180:19 185:16<br>354:11,20,24<br><b>marketing</b> 108:19<br><b>maryland</b> 8:5<br>246:13<br><b>massive</b> 122:5<br>313:17,23 314:6,9<br>314:11,13,14<br>315:13,21,25<br>316:4,13<br><b>master</b> 9:16<br>118:21,24 119:9<br>262:16,20 263:5<br>364:12,23 366:2<br>366:14,18 367:1,6<br>367:8 368:1,4<br><b>masters</b> 5:4 65:12<br>71:2 164:15<br>178:17 182:11,14<br>182:23 183:4,7,11 |
|---|---|--|---|

|   |  |  |   |
|---|--|--|---|
| 183:17,19,25<br>184:7,13,16<br>244:10<br><b>match</b> 211:4<br><b>matched</b> 211:7<br><b>matches</b> 291:10<br><b>material</b> 37:13,17<br>238:14 295:4<br>301:17<br><b>materials</b> 210:2<br>224:9,10 271:23<br>271:25 275:17,21<br>275:23 292:1<br>295:10 298:17<br>299:5,6 300:25<br>307:11 349:16<br>352:20 354:2<br><b>math</b> 133:16 177:8<br>180:15 182:9<br>274:17<br><b>mathematical</b><br>48:17<br><b>matter</b> 23:19 37:5<br>44:4 80:5 81:11<br>91:25 109:17<br>110:8,16 113:1<br>141:23 160:15<br>297:9 315:9,21<br><b>matters</b> 38:18<br>58:24<br><b>matthew</b> 6:9 8:17<br><b>matthew.ladd</b><br>8:23<br><b>maximum</b> 51:19<br><b>mazgaj</b> 6:9,19<br><b>mccann</b> 14:6,9<br>47:23 48:7,18,24<br>49:2,7,17,20 50:25<br>51:6,23 52:2,11<br>83:9,21 96:16<br>98:1 104:23 | 105:19 106:20<br>113:4 114:7,21<br>115:14 117:25<br>120:6 133:5<br>140:12 146:2,25<br>147:8 169:6 170:8<br>170:8 183:23<br>186:2,19 243:5,18<br>243:25 244:8,17<br>306:20 331:6<br>340:23 359:19<br>361:20 362:3,10<br>364:3 366:20<br><b>mccann's</b> 42:7<br>49:10 51:12 52:5<br>52:21 151:3<br>162:13 169:3,19<br>184:20 185:10<br>195:19 267:10,21<br>354:15<br><b>mccenroe</b> 8:9 13:7<br>245:10,13,17<br>246:25 247:5,7<br>248:21 250:2<br>253:17 259:13,17<br>259:23 261:12,14<br>262:8,16,25 263:3<br>263:7 264:2,21<br>265:11,22 268:2<br>269:19 270:13<br>272:25 273:7,10<br>273:17,24 274:3<br>277:14,18 279:16<br>282:13,22 283:9<br>283:11 284:23<br>285:12,19 286:17<br>287:12,19 288:3,7<br>288:16,21 289:1,6<br>289:11,16,22<br>290:1,4,13,18,25<br>291:4 293:2,5,8,9 | 295:7,25 296:5,10<br>296:24 299:9<br>361:5<br><b>mchugh</b> 2:8<br>362:23<br><b>mchughfuller.com</b><br>2:12,13<br><b>mckesson</b> 26:15<br>102:21 103:1,2,17<br>103:25 104:9<br>151:25 259:6,9,10<br>334:6,22<br><b>md</b> 1:6<br><b>mdl</b> 1:5 13:24 30:4<br>30:8 294:21<br>329:19 340:4<br>357:8<br><b>mean</b> 26:17 32:18<br>36:23 37:7 55:20<br>55:22 65:9,20,20<br>65:23 67:22 68:11<br>71:24 87:6 88:24<br>89:1,4,7,14,16<br>90:1 91:2 93:9<br>107:11,12 109:4<br>110:23 115:8<br>120:24 125:2,20<br>130:5 140:8<br>142:12 145:17<br>153:2 154:15,16<br>174:16,18,24<br>220:16 221:15<br>232:12 236:12<br>255:22 256:15,16<br>260:19 277:6<br>278:3 282:23<br>295:9 344:12<br>355:18,19<br><b>meaning</b> 26:12<br>76:14 209:19 | <b>meanings</b> 193:3<br><b>means</b> 54:15 91:3<br>91:8 276:25<br>277:20 334:8<br>349:17<br><b>meant</b> 211:24<br>286:6 307:23<br>309:6 330:5<br><b>measure</b> 170:21<br>316:17<br><b>measures</b> 110:15<br><b>mecca</b> 181:13<br><b>media</b> 303:5,10<br>338:21 339:1<br>357:16,21 359:1,6<br><b>medical</b> 92:2,13<br>92:19 96:3 192:12<br>199:4,5 209:20<br>342:14<br><b>medication</b> 162:5<br>342:1<br><b>medications</b><br>161:20 193:14<br>341:17<br><b>medicine</b> 108:9<br>172:14 210:16<br><b>meet</b> 73:5 112:21<br>327:16<br><b>meeting</b> 76:6<br><b>meetings</b> 312:24<br><b>members</b> 198:3,25<br><b>memorandum</b><br>13:23 78:15<br><b>memorize</b> 115:17<br><b>memorized</b> 268:21<br><b>memory</b> 267:11<br>305:23<br><b>mention</b> 251:20<br>342:22 343:3<br>348:9 |
|---|--|--|---|

[mentioned - monthly]

Page 39

|   |  |   |  |
|---|--|---|--|
| <b>mentioned</b> 102:25<br>103:24 132:12<br>134:23 298:11<br>323:10 327:17<br><b>mentioning</b><br>251:22<br><b>mere</b> 34:2<br><b>messed</b> 294:9<br><b>messrs</b> 6:6 11:5,15<br><b>met</b> 144:23 161:1<br>245:11,15<br><b>methadone</b> 253:11<br><b>method</b> 164:14,15<br>164:20,24 165:23<br>182:23 244:7<br>341:10,13 351:20<br><b>methodologies</b><br>15:15 48:8,10,13<br>49:12,21,22 51:1<br>52:1 83:10,15,22<br>84:21,23 96:17<br>113:3,18 114:8,24<br>115:1 116:1,9,13<br>116:13,22,23<br>117:2,6,9,23 118:2<br>118:3 244:2 319:2<br>319:6,9,14,18<br>330:20 331:1,2<br><b>methodology</b><br>113:7 166:19<br>244:4 254:25<br>255:12,17 256:8<br>330:18,18 341:20<br><b>methods</b> 15:16<br>182:21 183:2<br>234:14<br><b>metric</b> 154:2<br>170:17<br><b>metts</b> 4:15<br><b>mexico</b> 31:2,3 | <b>michael</b> 3:14<br><b>michigan</b> 3:10<br>24:14 63:2,7,8,17<br>64:4,5,13,15 129:9<br>194:18<br><b>microphone</b> 74:18<br>119:1,5<br><b>mid</b> 8:6 318:22<br><b>middle</b> 144:1<br>184:4 255:8<br>349:23<br><b>midst</b> 47:11<br><b>midwest</b> 370:17<br>373:1<br><b>migration</b> 209:9<br><b>mike</b> 3:21 176:19<br>224:14 358:23<br>361:18 364:11<br><b>mill</b> 107:24 192:23<br>193:12<br><b>milligram</b> 65:15<br>134:7 138:23<br>139:6 140:21<br>148:18,19 150:11<br>153:21,22 154:4<br>154:25 155:7<br>170:18 171:9<br>189:6<br><b>milligrams</b> 153:17<br><b>million</b> 171:22<br>172:7,17,21,25<br>176:8,11 177:10<br>177:16 180:11,22<br>181:3,7,17 185:17<br>185:23 201:8,15<br>201:23 204:22<br>205:8,14 256:2<br><b>mills</b> 192:9,25<br>193:2,18,19 198:8<br>198:23 199:2 | <b>mind</b> 173:19<br>189:22 308:4<br>314:16 315:13<br>366:23<br><b>mine</b> 115:20<br><b>minimize</b> 185:2<br><b>minimum</b> 314:12<br><b>minor</b> 77:14<br><b>minus</b> 177:15<br><b>minute</b> 82:21 85:9<br>168:1 250:21<br>266:20 296:1,4<br>358:1<br><b>minutes</b> 160:8<br>232:10 357:14<br>358:10 359:11<br>364:19 365:12,14<br>366:1,4<br><b>misconducted</b><br>79:8<br><b>mislead</b> 268:14<br><b>mispronounced</b><br>129:17<br><b>mispronouncing</b><br>201:12<br><b>missed</b> 271:21<br>324:11 364:14<br><b>missing</b> 43:18<br><b>mississippi</b> 2:10<br><b>misspeak</b> 63:20<br><b>mistaken</b> 254:20<br><b>mittchell</b> 18:5<br>274:4 276:8<br>277:12<br><b>mixed</b> 241:19<br><b>mme</b> 14:14 120:4<br>170:13,16 171:22<br>172:3,7,17,21<br>176:8,11 177:10<br>180:11,22 182:5<br>185:17,23 186:6 | <b>moa</b> 337:15<br><b>mobile</b> 356:21<br><b>model</b> 125:5<br><b>modify</b> 225:16<br><b>moment</b> 58:3<br>195:19 245:12<br>273:16 290:11<br><b>money</b> 54:16<br><b>monitor</b> 103:11,15<br>103:18 162:6<br>166:13 254:15<br>257:4<br><b>monitored</b> 111:2<br><b>monitoring</b> 46:15<br>48:9 68:19 90:14<br>97:18 104:1<br>113:24 114:5<br>161:17,19 165:21<br>175:2 178:25<br>194:8 227:7 251:2<br>251:8,10 256:25<br>257:10,18,21<br>258:3 269:6,14,21<br>270:9 274:15<br>276:4 282:10<br>291:21 292:7,14<br>292:22 293:6,12<br>293:17,21 294:4<br>295:3 298:10,13<br>298:13 319:10<br>321:16 324:9,22<br>325:12 346:24<br><b>monitors</b> 258:22<br><b>month</b> 51:19<br>53:10 59:3,4<br>140:22 148:22<br>149:17,25 152:8<br>242:11 290:21<br>291:7<br><b>monthly</b> 16:15<br>150:10 154:25 |
|---|--|---|--|

|   |  |   |  |
|---|--|---|--|
| <b>months</b> 53:15<br>66:20,21 155:5<br>200:24 201:5,9,16<br>201:20 291:12<br><b>morgan</b> 8:11,19<br>245:14 272:21<br><b>morganlewis.com</b><br>8:15,23<br><b>morning</b> 23:15<br>24:6,9,10,11 27:7<br>29:22 31:1 82:17<br>150:25 161:1<br>247:11 285:13<br>358:16 359:16<br>361:23 362:3<br>366:11<br><b>morphine</b> 170:17<br>170:18,22 252:25<br><b>motion</b> 359:22<br><b>motley</b> 10:7,15<br><b>motleyrice.com</b><br>10:11,19<br><b>mougey</b> 4:18<br><b>mount</b> 10:9,17<br><b>move</b> 150:22<br>189:25 259:13<br>261:12 277:14<br>317:16 325:8<br>326:14<br><b>moved</b> 39:16<br>189:2 359:21<br><b>moving</b> 41:7<br><b>multiple</b> 99:2<br>193:3 285:24<br>299:22<br><b>multiplier</b> 117:18<br><b>multiply</b> 117:15<br><b>multitude</b> 176:12<br><b>mumbled</b> 336:13<br><b>muted</b> 247:1 | <b>n</b><br><b>n</b> 2:1 3:1 4:1 5:1<br>6:1 7:1 8:1 9:1<br>10:1 11:1 22:1<br><b>name</b> 24:6 245:13<br>303:18 339:8<br>370:6 371:3,4,15<br>372:3,4,21<br><b>names</b> 145:22<br>197:14 250:25<br><b>naming</b> 40:24<br><b>narcotics</b> 199:3<br><b>narrative</b> 236:22<br><b>nasty</b> 143:23<br><b>national</b> 1:9 23:19<br>370:6 371:3 372:3<br><b>nationwide</b> 35:5<br><b>nature</b> 112:9<br>303:22<br><b>ndc</b> 269:1,2 271:8<br><b>nearby</b> 124:4<br><b>nearly</b> 33:2<br><b>necessarily</b> 77:1<br>135:12 136:15<br>295:10 366:9<br><b>necessary</b> 22:8<br>37:14<br><b>necessity</b> 199:6<br><b>need</b> 84:7 111:2<br>149:20 150:19<br>153:10 189:10<br>213:7 214:13<br>217:9,16 219:17<br>219:22 226:11<br>236:8 262:7,13<br>274:23 275:2,8<br>276:12 277:2<br>292:25 319:9<br>338:16 342:20<br>346:8 347:2<br>359:20 361:22 | <b>needed</b> 215:14,14<br>216:3 244:5<br>274:12 310:21<br><b>needs</b> 68:14 88:19<br>88:20 92:3,14<br>112:22 220:12<br>221:3 280:4<br>327:16<br><b>negative</b> 76:11<br>292:20<br><b>negligible</b> 56:18<br>56:20<br><b>neighboring</b><br>194:23<br><b>neither</b> 106:20<br>146:2,3 369:15<br><b>nevada</b> 31:4<br><b>never</b> 44:25 45:16<br>67:14 75:24 83:9<br>93:2 113:6 114:3<br>120:7 169:10<br>189:1 205:2,2<br>213:18 227:19<br>229:4 233:8 239:7<br>240:12 311:6,10<br>311:16,20 321:9<br>323:17<br><b>new</b> 8:21,21 10:23<br>11:21 28:6,15<br>29:16,17 30:3<br>31:2,3 41:4 58:17<br>71:15 114:1<br>167:19,22 244:3<br>246:12 363:5<br><b>newton</b> 134:6<br><b>nexus</b> 280:15<br>281:12<br><b>nhtsa</b> 42:14<br><b>nichols</b> 1:22 22:5<br>23:1 369:22 | <b>night</b> 363:2 368:6<br><b>niles</b> 181:17<br><b>nine</b> 89:15 131:11<br>131:12 174:3<br>181:20 195:6,6<br>201:3 202:16<br><b>ninety</b> 85:19<br>124:24 164:25<br>165:7 166:6,12<br>174:3 181:3<br>206:25<br><b>nonarcos</b> 244:21<br><b>noncash</b> 124:1<br><b>noncompliance</b><br>69:8 90:2 100:25<br>101:2 111:19<br><b>noncompliant</b><br>89:18 107:3<br><b>noncontrol</b> 353:7<br><b>noncontrolled</b><br>128:16 335:2<br><b>noncontrols</b><br>124:21 125:21<br>126:1,17,22<br><b>nondefendant</b><br>136:18<br><b>nondefendants</b><br>136:18 153:11<br>156:12<br><b>nonregistrant</b><br>260:22<br><b>nonresponsive</b><br>317:17 326:15<br>332:20<br><b>noon</b> 232:13<br><b>norm</b> 91:9 146:21<br>153:1<br><b>normally</b> 137:9<br><b>north</b> 4:8<br><b>northeastern</b><br>63:11,16 |
|---|--|---|--|

[northern - obviously]

Page 41

|  |  |  |   |
|--|--|--|---|
| <b>northern</b> 1:2 64:6<br><b>northwest</b> 7:10<br>64:8,14,14<br><b>notarized</b> 370:14<br><b>notary</b> 1:25 22:7<br>23:3 369:23<br>370:25 371:10,18<br>372:15,23 373:23<br><b>note</b> 127:20 360:7<br>362:20 370:12<br><b>noted</b> 228:11<br><b>notes</b> 21:5 302:3<br>304:4,5,6,25 305:2<br>305:14,17,20,21<br>306:5,6,9,13,15<br>339:11,15,18,23<br><b>notice</b> 299:18,21<br>360:23<br><b>notification</b><br>312:14<br><b>notify</b> 78:1 291:22<br><b>notion</b> 360:8<br><b>novak</b> 3:5<br><b>november</b> 14:23<br>15:22,22 17:17<br>133:10 214:19<br>287:6 290:8<br>329:22<br><b>number</b> 13:24<br>14:15 18:7,11,15<br>18:19,23 19:7,11<br>19:15,19,23 20:7<br>20:11 24:8 27:25<br>40:18 43:4 49:20<br>52:9,12 53:1<br>66:22 125:1<br>126:10 132:4<br>133:7 137:17<br>139:20 147:25<br>152:11,13 160:14<br>165:22,23 172:10 | 182:5 186:9<br>189:22,23 196:10<br>197:17,25 198:1,7<br>201:22 204:24<br>205:3 207:4,6,12<br>228:7 233:20<br>242:25 269:11<br>271:22 273:1,12<br>274:24,24 275:6,7<br>286:18 289:19<br>290:3,5 303:6,11<br>335:24 338:22<br>339:2 342:22<br>343:3 345:3 352:5<br>357:17,22 359:7<br>360:18 370:7,13<br><b>numbers</b> 16:11<br>20:14,20 56:22<br>115:2,5,21,24<br>129:8 153:1<br>155:18 165:3<br>166:5 176:3 189:9<br>189:11 205:13<br>206:6 210:18,23<br>299:10 372:7<br><b>numeral</b> 297:14<br><b>numerous</b> 261:9<br>340:24<br><b>nuts</b> 266:25 270:8 | 109:21 111:23<br>114:10 118:10<br>121:7 137:4 139:7<br>141:3 146:11,15<br>147:5 149:22<br>154:7 155:16<br>159:1 175:16,25<br>177:12 178:6<br>205:10 224:12<br>236:10,13 259:22<br>263:16 269:15<br>295:1 302:24<br>333:18 351:5<br>359:23 360:8<br>366:12<br><b>objected</b> 235:5<br>360:2<br><b>objection</b> 29:18,24<br>32:11,21 33:11,19<br>34:10 35:22 36:4<br>36:13 56:8,11<br>57:8,14 59:1 68:2<br>74:12,22 79:11,19<br>80:18 81:14 82:9<br>85:20 89:21 92:15<br>92:22 93:13,21<br>94:13 95:2,19<br>103:7 109:1<br>110:20 116:4<br>120:15,21 127:20<br>127:25 128:3<br>129:2 130:3 131:1<br>132:19 134:2<br>136:9 156:14<br>157:11,20 158:3<br>159:18 165:24<br>174:15 178:7<br>179:17 180:4<br>186:5 196:8 205:1<br>205:21 206:18<br>207:8 212:25 | 214:15 218:10,24<br>219:21 222:12<br>223:10 224:13<br>225:8 226:9<br>227:22 232:23<br>234:21 241:7<br>242:6 249:19<br>263:16 264:13<br>265:4 268:1 279:5<br>282:17 284:19<br>296:22 316:15<br>317:23 318:4<br>322:7 324:12<br>330:16 331:10<br>333:23 337:12<br>344:5 347:9<br><b>objections</b> 22:9,12<br>236:14<br><b>obligation</b> 70:21<br>84:11 103:5 162:6<br>166:13,15 218:6<br>256:25 257:4<br>258:3,24 259:20<br>263:19<br><b>obligations</b> 158:19<br>161:24,25 251:2,8<br>254:5 257:10,18<br>260:18 312:7<br>326:2,20 327:5<br>361:22<br><b>observations</b><br>239:12<br><b>observe</b> 145:11<br>146:1<br><b>obtain</b> 99:3<br><b>obvious</b> 89:12<br>90:5 107:13<br><b>obviously</b> 30:22<br>58:14 102:4<br>103:19 120:7<br>154:16 155:19 |
|  | <b>o</b><br><b>o</b> 22:1 68:25<br><b>o'brien</b> 4:18<br><b>oarrs</b> 16:16 98:18<br>98:23,25 99:4,5,13<br>99:23 100:2,8<br>150:8 194:8,11<br><b>oath</b> 32:4 156:20<br>156:25 226:4<br>361:14<br><b>object</b> 44:9 47:7<br>55:12 97:14   |  |   |

[obviously - ones]

Page 42

|   |   |  |  |
|---|---|--|--|
| 158:8 363:21<br><b>occasional</b> 321:5<br><b>occasions</b> 299:22<br>310:11<br><b>occur</b> 76:19 78:10<br>97:16 137:16<br>213:21 264:19<br>321:10 324:2<br>345:7<br><b>occurred</b> 111:5<br>123:6 153:19<br>158:9 248:15<br>250:1 313:4,7<br>314:19 318:6<br>324:5 344:24<br>356:10<br><b>occurring</b> 137:18<br>355:22<br><b>october</b> 17:11<br>138:21 190:15<br>252:13 290:22<br>291:7 329:21<br><b>offer</b> 29:9 41:21<br>43:9 44:6 64:21<br>65:4 174:11<br>209:10 210:3<br>227:16 364:16<br><b>offered</b> 22:13 45:3<br>45:7 46:13 47:1<br>242:23<br><b>offering</b> 41:25<br>45:17 110:4<br><b>offhand</b> 250:19<br><b>office</b> 61:7,17<br>62:19,21 63:1,4<br>64:3 80:11 103:15<br>141:10 142:4<br>144:24 148:2<br>272:23 290:2<br>291:16 | <b>officer</b> 60:17 62:6<br>62:6<br><b>officers</b> 61:22,23<br><b>official</b> 141:24<br>142:16,22 371:15<br>372:21<br><b>oftentimes</b> 60:24<br>312:9<br><b>ognen</b> 98:9,11,22<br>99:17 100:1,9<br><b>oh</b> 16:9,25 17:7<br>69:12 81:23<br>119:20 233:11<br>246:25 247:5,5,5<br>273:7 281:6 295:7<br>305:5 309:13<br>315:18 330:5<br>331:19 334:16<br>351:24 362:1<br>367:14<br><b>ohio</b> 1:2 2:20 7:6<br>8:4 9:19 13:20<br>17:9 25:2 42:25<br>43:6 63:2,8,11,13<br>64:6,7,12 98:19<br>99:2,12,21 100:1<br>131:6 156:20<br>157:3 158:16<br>159:15 168:17<br>170:4 171:18<br>185:11 190:13,19<br>191:7,9 194:20,22<br>195:5 196:1,10,13<br>201:21,22,25<br>202:2,3,4,11<br>205:14,19,23<br>207:25 208:7<br>231:14 310:6,17<br>310:25 311:2,10<br>311:20 370:2 | <b>ohio's</b> 191:13<br>194:8<br><b>okay</b> 24:18 25:4,9<br>29:21 30:10,19<br>31:17,23 32:7,13<br>38:2,16 41:3<br>43:24 45:13 47:5<br>47:10 54:11 57:10<br>57:17 59:11,20<br>61:18 62:17 63:1<br>68:18,22,25 69:12<br>70:19 75:25 76:13<br>76:25 77:7,21<br>78:2,12,21 79:2,7<br>79:14 82:7,23<br>85:4 86:5,23 87:2<br>87:25 88:10 91:2<br>96:16 100:23<br>101:7 111:10<br>113:8,15 114:6<br>124:7 125:16<br>130:24 132:3,24<br>139:4,14 141:23<br>142:8 143:1,22<br>144:17 147:25<br>151:20,24 152:15<br>152:21 156:1,9<br>160:24 161:12,15<br>164:12 167:25<br>181:12 187:2<br>189:4,16 193:11<br>193:23 203:2<br>208:14 213:11,12<br>214:4 217:12,18<br>224:6 225:22<br>229:3 231:12<br>232:4 234:4<br>240:23 244:24<br>245:21 247:5<br>256:23 257:17<br>258:19 262:25 | 263:11 264:5<br>266:24 268:22<br>270:15,19 274:2<br>276:6 277:18<br>282:14 283:5<br>284:2,6 286:8<br>287:4 288:9,16,21<br>289:16 291:3,25<br>292:4 293:15,22<br>294:8 295:18<br>296:9 299:7<br>301:24 302:8<br>303:3 304:10<br>305:8 306:8,11,15<br>308:8 309:18,24<br>311:1,6 313:10<br>314:10,22 315:18<br>316:5,11,20 318:1<br>320:14 321:15,24<br>322:10 323:20<br>324:15 325:16,23<br>329:23 331:22<br>332:19 333:7<br>339:22 341:9<br>344:21 348:8<br>349:22 357:15,24<br>362:4 364:5,8<br>367:2,4,7 368:4<br><b>old</b> 47:19 143:5<br>347:1<br><b>olstein</b> 11:18<br><b>omdl</b> 18:7,12,16<br>18:20,24 19:8,12<br>19:16,20,24 20:8<br>20:12,15,16,20,21<br>294:21<br><b>once</b> 144:23 161:1<br>183:24 227:19<br>275:12 359:21<br><b>ones</b> 53:3 98:13<br>118:3 204:16 |
|---|---|--|--|

[ones - orders]

Page 43

|  |  |   |   |
|--|--|---|---|
| 223:19 277:9<br>284:24 294:12<br>308:23<br><b>ongoing</b> 37:13<br><b>onsite</b> 227:12<br><b>open</b> 273:14<br>285:17 308:5<br>345:6,24 356:15<br><b>opened</b> 102:3<br>289:18<br><b>operate</b> 25:23 81:6<br>90:18 110:23,23<br>192:9 326:8<br><b>operated</b> 42:23<br>113:13 146:4<br>198:4 199:1<br>344:15<br><b>operates</b> 80:13<br>81:8<br><b>operating</b> 43:16<br>47:16 71:20<br>266:14<br><b>operation</b> 70:23<br>70:24 333:14<br><b>operations</b> 44:7<br><b>opiate</b> 1:9 23:20<br>370:6 371:3 372:3<br><b>opiates</b> 136:8<br><b>opine</b> 117:13<br><b>opinion</b> 25:7 33:23<br>37:18 41:13,19,25<br>43:14 45:17,24<br>46:1,7 48:23<br>49:11,13,16 50:19<br>52:8 68:22 79:24<br>100:10 101:20,24<br>102:4,17,23 107:9<br>108:14,21 110:1<br>111:17 124:11<br>159:4,12,21<br>165:19 173:12,15 | 173:18 179:19<br>180:6 184:12,16<br>208:24 209:1,6,11<br>209:11,22 210:1,3<br>210:20,21 211:15<br>225:3,14,14,17<br>229:8 230:1,19<br>238:24 239:23<br>242:23 251:18<br>259:1,18 292:16<br>313:16,23 314:5<br>315:1,9 316:6,10<br>317:6 318:14<br>328:7 332:15<br>333:17 337:11<br>340:12 343:10,16<br>344:16,22 345:12<br>345:18,25 352:12<br>352:13 354:19,22<br>355:3<br><b>opinions</b> 37:8 39:9<br>41:21 43:10,19<br>44:6 45:3,8 46:3<br>46:13 47:1 48:24<br>49:8 50:16 64:22<br>65:4 68:22 110:4<br>151:1 174:9,24<br>191:4 222:10,22<br>223:4,8 224:19<br>225:6,10 227:16<br>234:1 238:17<br>242:14 243:6<br>251:5 281:15,20<br>310:3,7 334:2,25<br>337:1,4 340:2,3<br>343:11 344:3<br><b>opiod</b> 16:24 17:6<br>41:22 43:2,7,13<br>45:8 107:5,15,21<br>108:23 116:16<br>117:11 118:8 | 135:3,13 159:13<br>168:16 170:3,22<br>173:10 228:24<br>229:4 251:18<br>282:9 318:24<br>325:5<br><b>opioids</b> 15:9 24:8<br>28:2 30:4,20,25<br>32:1 46:12 47:12<br>50:9 53:12 55:17<br>56:2 108:1,11,17<br>126:5 130:21<br>131:6 134:21,21<br>134:21 135:4,6,10<br>136:5 137:10<br>143:24 151:10<br>157:4,7,19 171:5<br>171:22 172:7,17<br>172:21 174:3,13<br>174:21 175:14<br>177:11 178:1,5<br>179:7,24 182:5<br>183:4,8,20 184:13<br>194:22 208:22<br>209:4,14 228:13<br>228:18 229:24<br>230:4,8,12 238:19<br>238:23 282:3<br>294:21 313:17<br>314:17,21 315:3<br>317:3,19 354:25<br><b>opportunity</b> 62:13<br>174:1 220:3,5<br>310:21 311:3<br><b>opposed</b> 66:21<br>79:3 279:2<br><b>option</b> 365:7<br><b>oral</b> 23:11<br><b>order</b> 32:1 46:15<br>48:9 59:16 66:4,9<br>68:18 78:20 87:19 | 90:14 97:18<br>108:22 113:24<br>114:5 161:17,19<br>165:21 167:2<br>175:2 178:25<br>214:13 217:9,16<br>227:7 233:17,25<br>234:12,19 239:24<br>251:2,8,10 256:24<br>257:10,18,21<br>258:3 264:22<br>269:6,13,21 270:9<br>274:15,22,25<br>276:4 279:7<br>282:10 291:21<br>292:7,14,22 293:6<br>293:11,17,20<br>294:3,17 295:3<br>298:10,13 299:10<br>319:2,10 320:1<br>321:10,16 322:14<br>324:9,21 325:12<br>334:6,21 345:7<br>352:21 359:20<br><b>ordered</b> 170:12<br>200:22 201:3,8,14<br>201:20 202:16<br>205:18 206:15<br><b>ordering</b> 103:16<br>103:19 123:14<br>140:22 148:18,23<br>149:6,7<br><b>orders</b> 15:16,16<br>90:15,20 113:13<br>114:25 116:17<br>117:8 118:20<br>162:5,7,10 164:16<br>164:25 165:7,8,22<br>166:6,7,11,14,18<br>222:1 228:9<br>232:15 234:11,13 |
|--|--|---|---|

|  |   |   |  |
|--|---|---|--|
| 234:18 239:18,20<br>239:25 240:6,13<br>255:2,12,18<br>256:16,19 286:1<br>286:10 287:5<br>290:21 291:6<br>295:12,13 320:11<br>320:16,20,23<br>321:3,12,12,25<br>322:4,6,19 323:3,6<br>323:13 324:10<br>328:8 331:15<br>333:10 335:13<br>341:20 346:1<br>350:5,6 359:22<br><b>organization</b><br>35:14 198:3<br><b>orient</b> 303:25<br><b>outcome</b> 33:6,24<br>76:6<br><b>outlined</b> 203:24<br>324:4<br><b>outlining</b> 323:18<br><b>outside</b> 36:23 42:1<br>59:3 61:23 62:25<br>138:25 142:2,4<br>145:16 153:1<br>158:4 176:1 179:3<br>179:20,22 207:22<br>215:6 216:19<br>254:11 256:20<br>262:24 270:4<br>326:10 346:25<br>355:7,10,16<br><b>overall</b> 88:18,19<br>225:16 282:8<br>354:11,24<br><b>overarching</b> 69:13<br>69:19,24 70:10<br>88:1 | <b>overholts</b> 150:11<br>150:12,14,18<br>151:8,11,16<br>154:15,16 157:9<br>158:10 172:12,20<br>172:24 176:5,7<br>177:9,17 178:12<br>179:13,23<br><b>overholts's</b> 154:18<br><b>overlapping</b> 189:8<br><b>overlooked</b> 178:19<br><b>overprescribers</b><br>194:2<br><b>override</b> 74:14,24<br>84:11 270:22<br>272:10 277:25<br><b>overrides</b> 271:11<br><b>overseen</b> 35:3<br><b>oversight</b> 329:12<br>330:4,9<br><b>owned</b> 146:4<br>148:5 203:9,11,11<br><b>owner</b> 151:9<br><b>oxford</b> 6:12 12:10<br><b>oxy</b> 123:18 134:22<br>134:23,24 135:5<br>135:19 139:6,19<br>139:20 140:6,13<br>140:13,14,21<br>148:19 154:5<br>155:7 156:5<br>327:18<br><b>oxycodone</b> 16:15<br>65:14 93:12<br>123:19 134:6<br>136:6 150:10<br>152:17,18 153:18<br>153:20,22 154:25<br>164:16 165:1<br>166:3 183:10<br>187:11,17,23 | 188:6,20 189:23<br>195:8,23 196:2<br>200:13,18,23<br>201:4,8,15,20<br>202:10,17,24<br>204:23 205:9,15<br>205:19 206:13,16<br>207:1,14 252:14<br>253:3,18 254:2,3<br>255:2 256:1,11,25<br>321:21 327:25<br>328:9,24,25<br><b>oxycodones</b> 135:5<br><b>oxycontin</b> 94:18<br>95:9 138:23<br>148:24 153:20<br><b>oxymorphone</b><br>253:5   | 128:8 131:6<br>139:15,16,17<br>140:5 154:24<br>162:25 163:22<br>164:11,19 166:25<br>169:25 170:3<br>185:12 186:8,9,22<br>187:20 190:14<br>191:6,20,22,22,24<br>195:2,12 197:1,7<br>199:5,8,9,19<br>200:12 214:21<br>215:10 217:19<br>219:13 221:7,8,16<br>221:18,20 222:14<br>226:20 228:14,21<br>228:22 229:1<br>231:17,18 232:4<br>234:24 235:1,8<br>237:9 241:2<br>245:19 252:3<br>254:18,25 255:7<br>270:14 277:21<br>283:22 284:5<br>286:5,6 290:17,19<br>291:5 293:4<br>297:13,13 298:7<br>299:11,14 300:13<br>301:12 305:12,22<br>306:5,6 307:12,15<br>307:23,24 308:5<br>308:10 311:24<br>313:15 328:11<br>330:23,25 331:3<br>331:12,17 334:4<br>334:10 335:5,8<br>341:7 348:1,3<br>349:21 351:16,16<br>351:22,23,24<br>362:1,1,1 370:13<br>370:15 372:7 |
|  |   | <b>p</b>  |  |
|  |   | <b>p</b> 2:1,1,15 3:1,1<br>4:1,1 5:1,1 6:1,1<br>7:1,1 8:1,1,9 9:1,1<br>10:1,1 11:1,1 22:1<br><b>p.a.</b> 4:18<br><b>p.c.</b> 3:7 11:19<br>12:18<br><b>p.m.</b> 245:3,5,5,7<br>303:7,9,9,12<br>338:23,25,25<br>339:3 357:18,20<br>357:20,23 359:3,5<br>359:5,8 368:9,12<br><b>page</b> 4:14 13:3,13<br>14:4 15:3 16:4,22<br>17:4 18:3 19:4<br>20:4 21:3,11<br>32:14 64:16 86:6<br>86:18,21 98:13<br>105:13,16 106:13<br>106:25 111:18<br>118:13,16,19,19 |  |

[page - perfect]

Page 45

|  |  |   |   |
|--|--|---|---|
| 373:3<br><b>pager</b> 338:10<br><b>pages</b> 40:6 51:17<br>51:18 52:21 63:24<br>86:9 169:22<br>171:12,15 237:14<br>237:19 238:15<br>306:12 335:5,23<br>338:14<br><b>paid</b> 54:23 55:25<br>58:15 178:10<br>306:23<br><b>pain</b> 192:8 193:5,5<br>193:6,12,16,18<br>198:7,8,10,13,18<br>198:22 199:13,14<br>199:14,15,15<br>203:4,5,6,11,15<br>204:8,21 205:7,17<br>205:18 206:15,23<br>206:25 207:20<br>208:12,13,16,21<br>209:2<br><b>pairing</b> 61:7<br><b>palm</b> 198:4<br><b>papantonio</b> 4:17<br><b>paper</b> 345:4,14<br><b>paperwork</b> 275:14<br><b>paragraph</b> 64:19<br>138:19 147:13<br>148:16 191:8<br>192:7 193:24<br>197:25,25 198:20<br>198:25 199:24,25<br>200:12,16,21<br>201:2,7 202:14<br>206:22 207:18<br>208:2 270:16<br>277:22 299:17<br>300:6 334:17<br>349:23,24 350:3 | 351:17,25<br><b>paragraphs</b><br>200:10,13 235:1,4<br>284:8<br><b>paralegal</b> 10:14<br><b>parcel</b> 355:24<br><b>parentheses</b> 256:3<br><b>park</b> 8:20<br><b>parking</b> 145:20<br>146:1<br><b>parkway</b> 4:8<br><b>parse</b> 344:11<br><b>part</b> 26:14 71:4<br>79:7 122:12<br>129:23 154:6<br>155:5 169:13<br>182:23 191:17,18<br>194:3 206:8<br>209:25 223:3<br>224:23 231:2<br>244:12 251:17<br>264:19 265:7<br>267:21 275:10<br>278:16 279:19,23<br>307:9 312:18,25<br>314:17 319:19<br>323:19 341:20<br>342:17 351:9<br>355:24 366:9<br>367:18 372:9<br><b>participate</b> 232:2<br><b>particular</b> 40:10<br>74:2 92:3 94:11<br>98:4 111:17<br>147:21 174:7<br>189:6 261:24<br>272:2 273:1<br>278:24 286:4<br>300:23 351:9<br><b>parties</b> 22:3,11<br>369:16 | <b>partly</b> 135:24<br><b>partnered</b> 61:5<br><b>parts</b> 237:15<br><b>party</b> 26:20,23<br><b>pass</b> 76:11,13<br><b>passed</b> 99:22<br><b>passing</b> 79:16<br><b>paste</b> 115:13<br><b>patient</b> 351:19<br><b>patients</b> 192:18<br>193:15 194:15<br>208:3,7 341:16,25<br>342:4,9<br><b>patrick</b> 5:15<br><b>patrons</b> 199:2<br><b>pattern</b> 90:16,21<br>323:14 331:15<br>333:11,12,14<br><b>patterns</b> 123:14<br>123:16,16<br><b>paul</b> 3:5<br><b>pause</b> 105:8<br>119:17 222:17<br>291:2<br><b>pavlich</b> 156:25<br>157:5<br><b>payment</b> 351:20<br><b>payments</b> 103:20<br>124:2<br><b>pbeisell</b> 5:22<br><b>pdf</b> 191:23 195:12<br>199:9 304:21<br><b>pdfs</b> 338:15<br><b>penalty</b> 15:7 138:5<br><b>pending</b> 28:6<br>30:16 58:24<br>259:15 261:13<br><b>peninsula</b> 64:4,5<br><b>peninsulas</b> 63:7<br><b>pennsylvania</b> 6:14<br>8:13 12:12 | <b>penny</b> 54:15<br><b>pensacola</b> 4:20<br><b>pension</b> 56:5<br><b>pensions</b> 55:18,22<br><b>people</b> 40:24<br>60:12,14 145:18<br>236:2 249:25<br>346:23 363:7<br><b>percent</b> 85:18,18<br>85:19,19 86:2<br>89:5 94:20 95:10<br>95:12,14,17 97:9<br>97:10 115:6,6<br>116:2,2,3,7 119:16<br>121:2 124:24<br>125:25 126:15,15<br>127:17 128:1,15<br>128:15 131:12,14<br>131:15 132:4,23<br>133:13,23,24<br>134:5 136:5,7<br>137:10,11,16<br>164:25 165:8<br>166:5,7,12 173:10<br>174:2,3,20,23,25<br>175:6 206:25<br>207:21 208:5,8<br>256:4,21 297:16<br>341:11<br><b>percentage</b> 85:17<br>94:23 124:20<br>125:8,17 131:7<br>132:16,17 133:8<br>133:12 134:5<br>207:13 315:23<br><b>percentages</b> 96:6<br>128:18 135:9<br><b>percents</b> 115:20<br>127:9 134:10<br><b>perfect</b> 89:10,12<br>89:17 90:4 111:3 |
|--|--|---|---|

|   |  |   |   |
|---|--|---|---|
| 112:1,3 187:1<br>285:22<br><b>perfectly</b> 80:22<br><b>perform</b> 73:5<br><b>performance</b><br>225:5<br><b>performed</b> 66:25<br>67:3 150:9<br><b>period</b> 59:17<br>77:23 100:13<br>102:2,18,25 106:5<br>113:23 129:20<br>140:10 185:17,24<br>187:24 194:9<br>198:18 205:5<br>206:5 209:15<br>231:11 251:23<br>314:25 323:11<br>330:20 346:21<br><b>periodically</b> 67:3<br>271:7<br><b>periods</b> 46:20<br>139:21<br><b>perjury</b> 15:7<br>138:5<br><b>permanent</b> 270:22<br>271:1 276:7,15,25<br>277:3,5,19<br><b>perryman</b> 246:13<br>250:24 297:5,19<br>297:23<br><b>perrysburg</b><br>231:14 237:10<br><b>person</b> 65:3,21<br>144:23 213:19<br>214:3 279:25<br><b>personal</b> 141:20<br>141:25 142:7,10<br>231:20<br><b>personally</b> 125:18<br>371:11 372:15 | <b>personnel</b> 227:11<br>297:5 346:20<br><b>perspective</b> 90:21<br>95:17 97:12<br><b>pertain</b> 258:16,19<br><b>pertained</b> 280:24<br>282:3<br><b>pertaining</b> 250:11<br>253:19<br><b>ph.d.</b> 14:7,10<br>84:22<br><b>pharmaceutical</b><br>5:4 178:17 182:12<br>182:15<br><b>pharmacies</b> 14:22<br>15:17 16:24 17:6<br>25:17,20,23 26:5,9<br>26:18 34:7,8,16,17<br>34:21,22 35:10,12<br>35:19,20 36:3<br>41:14,15,20 42:4<br>42:12,13,23,23<br>43:3,15,20,25 44:1<br>44:7,13,23 45:10<br>46:8,9 50:12<br>65:25 93:5,20<br>95:7 97:3 99:2<br>103:12,16,21<br>104:1,9 105:25<br>108:4,24 109:9,13<br>109:14,15,19<br>110:5 111:3,11,22<br>115:3 121:5,16<br>122:3,3,10 123:5<br>124:4,10,12 127:9<br>128:14,21 133:9<br>133:12 136:17,19<br>140:20 143:17<br>145:14,23 146:4<br>146:22 147:2<br>148:3,5 153:4 | 155:2,5 156:6<br>157:17,17,18<br>159:6,13,16<br>161:18 162:11<br>167:10,12 168:17<br>169:7,23 170:4,12<br>171:11,13 172:1,2<br>172:5 173:5<br>174:13 179:3,16<br>183:5,17,20 184:1<br>184:8 192:10<br>207:6,15 209:23<br>210:11 211:1,12<br>228:13 229:14,15<br>229:19,25 230:22<br>247:14,18 251:7<br>254:2,9,12 255:13<br>255:19,22,23<br>256:24 257:13,19<br>258:23 259:10<br>267:1 277:9<br>310:24 311:2,4<br>312:12,15 334:5<br>334:21 336:4<br>345:6 352:15<br>353:1,15,19<br>355:21<br><b>pharmacist</b> 44:11<br>44:17 211:12<br>262:1 263:14,23<br>263:24 264:11,19<br>265:1,7,17,19<br>266:1,12,14<br><b>pharmacist's</b><br>266:7<br><b>pharmacists</b> 194:1<br><b>pharmacy</b> 7:4<br>35:1,1,2,11,15<br>43:1,6,11 44:7<br>45:24 46:2,8 51:1<br>61:1 93:7 94:9,21 | 94:22 95:13 96:7<br>96:12,25 97:2<br>98:5 103:10<br>108:25 109:16<br>110:10,14 111:21<br>112:4 122:18,21<br>122:24,24 123:13<br>123:13 125:9<br>126:8,12 127:2<br>131:11 132:7,17<br>134:12 135:20,22<br>136:15 138:12,14<br>139:5,21 145:3,11<br>145:20 146:20<br>147:15,18,20<br>148:12,17,23<br>149:6,10,16<br>150:12,12,15<br>151:7,21,22,24<br>152:2 155:2,3,13<br>155:14 156:17,20<br>158:17 159:7,15<br>161:25 162:5<br>165:10,13 166:22<br>169:16 172:11,12<br>172:16,23 176:5,7<br>177:9 178:12,20<br>179:13,23 180:9<br>182:6 183:12<br>196:12 210:5<br>230:15,25 231:1<br>238:25 239:3,14<br>247:10 248:3,3<br>251:6,10 254:6<br>257:14,22 258:21<br>261:9 262:2<br>263:25 264:12,18<br>264:23 265:2,8,9<br>265:10,18,25<br>266:6,10,18<br>279:12 310:17 |
|---|--|---|---|

|  |  |   |  |
|--|--|---|--|
| 311:3,10,17,20,21<br>343:15,18 345:9,9<br>345:24 346:19<br>352:20 353:8,11<br>355:6,14 356:6,8<br><b>pharmacy's</b> 95:16<br><b>philadelphia</b> 8:13<br><b>phone</b> 137:13<br>144:25 157:25<br>370:3<br><b>physically</b> 24:15<br>267:3<br><b>physician</b> 138:24<br>199:21<br><b>physicians</b> 199:22<br><b>pick</b> 115:5 116:1<br><b>picked</b> 116:22<br>294:12,13<br><b>pickers</b> 321:19<br><b>picking</b> 28:13<br>220:9 361:5<br><b>picture</b> 156:17<br><b>pieces</b> 345:3<br><b>pill</b> 107:24 189:6<br>192:9,22,25,25<br>193:1,12,18,19<br>198:8,23 199:2<br>315:24<br><b>pills</b> 135:17<br>145:15 146:20<br>183:10 193:18<br>209:9 210:25<br>315:25 341:16,22<br>341:24 342:15<br><b>pittsburgh</b> 6:14<br>12:12<br><b>place</b> 7:21 110:22<br>240:19 257:22<br>274:15 276:19<br>298:14 318:6<br>331:15 | <b>placed</b> 255:12,18<br>256:20 262:1<br>278:9,13 353:14<br><b>places</b> 263:13,19<br>363:8<br><b>placing</b> 257:23<br><b>plaguing</b> 107:5<br><b>plaintiff</b> 59:10<br>268:5,9,18,19<br>281:5<br><b>plaintiffs</b> 2:4 3:4<br>4:4 11:13 24:19<br>24:24 28:22 31:10<br>33:1 38:6 40:2,18<br>53:11 54:22 55:16<br>56:2,7 57:1,13<br>130:20 146:10<br>147:1,10 158:23<br>167:5 178:11<br>179:14 180:2<br>227:16 267:23<br>295:18 306:22<br>309:2 313:5<br>332:23 341:1,5<br>350:16,23 356:21<br>357:7 359:9 360:2<br>360:6,8 361:8,11<br>365:19<br><b>plan</b> 28:10 30:24<br>211:21 232:7,11<br><b>planning</b> 362:5<br><b>plates</b> 346:25<br><b>played</b> 119:4<br><b>pleasant</b> 10:9,17<br><b>please</b> 23:23 34:12<br>41:6 164:11 168:8<br>234:24 274:21<br>275:6 284:1<br>290:23 296:12<br>297:1 322:3<br>334:11 348:1 | 358:22 370:11,11<br><b>pleased</b> 298:8<br><b>pled</b> 143:23<br><b>plenty</b> 241:13<br>270:3<br><b>pllc</b> 5:7<br><b>plus</b> 127:10<br>359:11<br><b>pnovak</b> 3:12<br><b>poerschke</b> 4:14<br>362:4,9<br><b>point</b> 26:3 40:4<br>46:24 61:8 62:2<br>69:6 92:10 125:20<br>142:11 152:1<br>155:24 189:1<br>206:7 266:22<br>283:18 315:20<br>361:7<br><b>pointed</b> 175:11<br><b>pointing</b> 152:10<br><b>points</b> 305:3<br>345:14<br><b>police</b> 61:23 62:5<br>157:25<br><b>policies</b> 49:15<br>323:12,17 324:7<br>324:16 325:20<br>326:9 328:8,24<br>345:4<br><b>policy</b> 75:10 79:24<br>113:24 191:11<br>244:10 321:16<br>322:13,15 327:22<br>332:17<br><b>polster</b> 1:7<br><b>ponce</b> 3:17<br><b>pop</b> 285:16 364:2<br><b>popped</b> 273:14<br><b>popping</b> 168:6 | <b>portion</b> 235:6<br>340:9<br><b>portions</b> 39:23,24<br>40:19<br><b>position</b> 84:14<br>130:7 143:18<br>167:7 325:6<br><b>positive</b> 293:10<br><b>possible</b> 32:19<br>41:8 112:2 125:12<br>138:9 178:4<br>228:23 242:3<br>326:4 358:23<br><b>post</b> 100:18<br>101:24 102:17<br>285:6<br><b>potency</b> 171:5<br><b>potential</b> 33:6,13<br>33:24 46:22<br>135:10 192:11<br>276:22 321:10<br>322:13<br><b>potentially</b> 37:12<br>37:14 44:18 47:4<br>58:9 112:5 122:21<br>145:4 319:14<br><b>pplpc01800027...</b><br>16:12<br><b>pplpc01800027...</b><br>16:12<br><b>ppoerschke</b> 4:22<br><b>practice</b> 31:6 72:7<br>75:10 138:25<br>141:23<br><b>practices</b> 29:11<br>310:12<br><b>practitioners</b><br>194:16<br><b>pre</b> 98:23<br><b>prearranged</b><br>158:10 |
|--|--|---|--|

[preceding - program]

Page 48

|                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>preceding</b> 291:11  | 263:15 265:17            | <b>previously</b> 49:14  | <b>procedures</b> 87:12  |
| <b>preclude</b> 29:9     | 313:17 370:6             | 54:22 100:3 269:3        | 222:5 323:17             |
| 149:24                   | 371:3 372:3              | <b>primarily</b> 63:17   | 324:7,17 325:20          |
| <b>prefatory</b> 223:15  | <b>prescriptions</b>     | 138:23 199:1             | 326:9 345:4              |
| <b>prefer</b> 359:15,24  | 14:20,21 41:23           | <b>primary</b> 139:13    | <b>proceeding</b> 30:4   |
| 363:21                   | 43:13 44:2,16            | 321:16                   | 355:5,14                 |
| <b>prejudicial</b> 361:9 | 94:24 95:15 97:7         | <b>principal</b> 179:23  | <b>proceedings</b> 23:12 |
| <b>preliminary</b> 37:7  | 133:6,7 138:23           | <b>principally</b> 198:4 | 32:1,4 79:3,6            |
| 123:17                   | 194:1 206:24             | <b>print</b> 169:8 279:1 | <b>process</b> 249:4,13  |
| <b>preparations</b> 75:5 | 207:13,19 208:9          | <b>printed</b> 294:16    | 274:15 304:1,13          |
| <b>prepare</b> 57:2,4    | 209:14,19,23             | <b>printer</b> 275:13    | <b>processes</b> 298:13  |
| 75:11 133:5              | 210:4,7,8,10             | <b>prior</b> 22:14 73:20 | <b>proctor</b> 4:17      |
| 339:22                   | 239:19 240:8             | 75:5,8 100:21            | <b>procured</b> 199:2    |
| <b>prepared</b> 13:20    | 342:6,11,13              | 346:10                   | <b>produce</b> 216:13,14 |
| 31:20 33:7 52:4          | <b>present</b> 9:14 10:4 | <b>priorprod</b> 13:24   | <b>produced</b> 49:20    |
| 56:23 92:1 115:12        | 11:4,14 12:6             | <b>privileged</b> 235:4  | 105:19 150:8             |
| 236:3                    | 24:15 42:25 50:7         | <b>probably</b> 39:22    | 233:5,15 241:1           |
| <b>preparing</b> 37:19   | 132:1 209:16             | 40:11 53:23 58:5         | 250:10 294:6,25          |
| 239:4 293:18             | 230:5                    | 59:9 61:4 97:8           | 295:8 300:17,18          |
| 308:14 330:10            | <b>presentation</b>      | 113:22 125:24            | 301:1 309:20             |
| 352:12 353:13,24         | 312:14                   | 152:18,19 173:21         | 323:6                    |
| <b>preregistration</b>   | <b>presented</b> 190:18  | 181:19 229:18            | <b>product</b> 29:11     |
| 66:25 67:8 71:10         | 279:20                   | 269:10 273:21            | 120:2 148:19             |
| 72:10 75:13              | <b>presumably</b> 82:4   | 282:20 285:11            | 238:3 345:21             |
| 248:23 249:4,13          | 256:12                   | 340:17 356:16            | <b>production</b> 92:7   |
| <b>prescribe</b> 269:4   | <b>presume</b> 249:16    | 361:24                   | 186:16 235:5             |
| <b>prescribed</b> 211:3  | <b>presuming</b> 256:23  | <b>problem</b> 125:9,12  | 300:25 333:8             |
| <b>prescriber</b> 100:7  | <b>pretty</b> 72:24 96:8 | 137:14 145:5,14          | 370:15,17,22             |
| 123:16 192:4             | 109:5 143:23             | 161:10 180:15            | <b>products</b> 65:15    |
| <b>prescribers</b> 194:6 | 144:21 174:24            | 278:25 285:22            | 120:13 152:17,18         |
| 194:22 195:6             | 178:8 192:23,23          | 290:15 291:1             | 167:11 254:10            |
| <b>prescribing</b> 99:3  | 296:19 318:12            | <b>problematic</b>       | 354:12 355:21            |
| 104:4 123:15             | <b>prevent</b> 45:16     | 125:15                   | <b>professional</b> 1:24 |
| 126:3 192:25             | 69:11 70:15 71:1         | <b>problems</b> 108:24   | 22:7 23:2 138:25         |
| 211:7                    | 177:21 258:9             | 225:23 226:23            | <b>proffer</b> 29:10     |
| <b>prescription</b> 1:9  | 259:5 260:2              | 227:8,20                 | <b>profiles</b> 351:19   |
| 17:9 23:19 190:13        | <b>prevention</b> 13:18  | <b>procedural</b> 367:19 | <b>program</b> 60:1      |
| 191:10,13 192:19         | <b>previous</b> 44:12    | <b>procedure</b> 23:6    | 70:12 78:9,17            |
| 194:8,22 199:3           | 55:3 80:25 106:17        | 332:17 371:5             | 257:24 269:14            |
| 210:15 211:2,10          | 158:5 214:25             | 372:5                    | 270:9 279:11             |
| 240:2,14 262:2           | 216:7 317:25             |                          | 291:21 292:7,14          |

|  |   |   |   |
|--|---|---|---|
| 292:22 293:6,12<br>293:17,21 298:11<br>319:11 336:10<br><b>programs</b> 337:17<br><b>prohibit</b> 325:25<br>326:18 327:3<br><b>prohibited</b> 327:12<br>327:14<br><b>project</b> 241:11<br><b>projects</b> 144:4<br><b>promise</b> 27:12,17<br>253:2<br><b>promulgated</b><br>162:3 325:25<br>326:17 327:2<br><b>proof</b> 323:25<br><b>proper</b> 34:14<br>116:13,19 122:4<br>198:11 248:9<br>276:21<br><b>properly</b> 214:3<br><b>proportionate</b><br>148:24<br><b>proposed</b> 67:24<br>144:5,7<br><b>proposing</b> 261:5<br><b>protective</b> 294:17<br><b>protocol</b> 360:22<br><b>proven</b> 337:7,14<br><b>provide</b> 29:2 31:8<br>45:23 50:19 51:15<br>52:8 53:12 56:21<br>73:22 74:7 87:11<br>124:11 127:21<br>173:13,14,16<br>174:25 210:19,23<br>211:14 255:11<br>270:7 275:6 313:5<br>332:22 343:11<br>347:4 354:8 | <b>provided</b> 23:6<br>25:6 38:10 46:3,7<br>46:19 48:7,17<br>49:16 50:15,25<br>52:2,7 54:21<br>56:25 75:24 87:20<br>127:11 130:19<br>138:9,11 145:7<br>156:19 208:24<br>231:6 250:16<br>263:21 293:16<br>322:23 331:6,13<br>331:24,25 332:4,7<br>332:8,12,23 347:7<br>347:11 349:3,6<br>350:16 354:21<br><b>provides</b> 225:15<br><b>providing</b> 109:24<br>333:2<br><b>provision</b> 261:19<br>263:12<br><b>public</b> 1:25 22:7<br>23:4 356:15,18<br>369:23 371:10,18<br>372:15,23 373:23<br><b>publications</b><br>127:10<br><b>publicly</b> 74:1,3<br>94:4<br><b>published</b> 94:4<br>126:24<br><b>puerto</b> 3:19<br><b>pull</b> 161:5 213:7<br>311:25<br><b>pulling</b> 240:25<br><b>purchase</b> 229:16<br>230:8<br><b>purchased</b> 198:13<br>200:14 201:21<br>202:9,24 204:22<br>205:8 | <b>purchaser</b> 145:15<br><b>purchases</b> 103:11<br>355:9,17,19,23<br>356:8,11<br><b>purchasing</b> 104:9<br>161:20 167:12<br>200:18 230:12<br>254:10,12 257:1<br>257:20<br><b>purdue</b> 141:2<br>143:11,17,17,19<br>143:22 148:8<br>239:9<br><b>pure</b> 26:12<br><b>purport</b> 182:22<br><b>purported</b> 100:25<br>101:2<br><b>purpose</b> 67:7<br>209:20 335:20<br>352:22<br><b>purposes</b> 123:4<br>183:16 184:2,8<br>208:17 239:4<br>241:5 342:14<br><b>pursuant</b> 193:7<br>198:13 216:13<br>217:6 360:22<br><b>push</b> 61:9<br><b>put</b> 80:19,21 93:11<br>114:21 120:10<br>155:11 166:17<br>168:15 174:23<br>190:12 219:18<br>220:14 249:23<br>257:21 258:3<br>273:15,18 276:18<br>278:17 289:20<br>305:3 335:20<br>337:8 339:14<br>352:9 354:4<br>363:25 367:3,17 | 367:17<br><b>puts</b> 186:19<br><b>putting</b> 175:18<br>281:24 292:16<br>335:20 359:17<br><b>q</b><br><b>qualified</b> 64:21<br>65:4 218:11<br><b>qualify</b> 159:19<br><b>quantico</b> 66:12,15<br><b>quantified</b> 174:6<br>175:9<br><b>quantify</b> 175:20<br><b>quantities</b> 274:16<br>274:23<br><b>quantity</b> 315:22<br><b>quarters</b> 365:1,3<br>365:16<br><b>quasi</b> 192:10<br><b>querying</b> 277:8<br><b>question</b> 27:10,13<br>27:16,22 28:24,25<br>29:2 34:11 35:17<br>41:6 43:17 44:13<br>44:20 49:25 54:1<br>54:4 56:9,12 59:5<br>60:8 74:2,9,11<br>81:24 84:19,20,24<br>84:25 85:22 86:19<br>94:1 95:4 96:9,9<br>102:13 104:13,20<br>105:3 106:17<br>114:11 155:20,22<br>158:5 165:15<br>171:14 188:3<br>207:10 212:10<br>214:3 215:21,23<br>216:1 222:4,8,20<br>223:16 224:15,16<br>226:19 227:17<br>229:22 233:7 |
|--|---|---|---|

[question - real]

Page 50

|   |  |  |   |
|---|--|--|---|
| 240:4,4,5,11,21<br>254:4 259:15<br>261:13 262:5,9<br>263:4 264:3,6<br>268:9 270:2,5,6<br>275:1 277:16<br>278:21 280:20<br>281:7,11 284:24<br>285:5 302:11<br>304:3 306:3<br>307:13 315:15,20<br>316:23 322:3<br>324:14 325:9<br>326:15,23 332:22<br>341:23,23 342:2<br>344:10,16 345:11<br>348:19 350:11<br>352:25 354:8<br>355:11 356:2<br><b>questioning</b><br>160:20 221:14<br>246:23<br><b>questionnaires</b><br>127:7<br><b>questions</b> 22:10,10<br>27:20 32:8 41:10<br>45:20 56:23 144:5<br>144:7 154:22<br>160:14,17 161:14<br>191:17,20 197:24<br>212:8,24 213:2,7<br>213:11,16,25<br>214:14 215:15<br>216:4 219:20,25<br>220:21 221:1<br>235:8 243:15<br>262:11,17 266:24<br>303:2,21,25<br>305:10 306:19,20<br>338:8,12 339:10<br>349:7 357:13 | 366:6 369:9<br><b>quick</b> 47:20 82:20<br>82:23 274:17<br><b>quicker</b> 212:21<br><b>quickly</b> 30:2 41:7<br>51:11 59:12<br>118:14 143:10<br>188:8 219:14<br>338:13 339:10<br><b>quite</b> 35:13 64:12<br>123:21 139:24<br>364:14<br><b>quota</b> 14:13 92:7,9<br>93:11 94:18 95:8<br>95:9,25 96:1,2<br>121:1,12 123:9,9<br>317:13,14<br><b>quotas</b> 91:18,18<br>91:21,21,24,25<br>92:6,7 93:2,3,6<br>94:4,10 95:21<br>96:19 105:5 106:9<br>106:14,19,23<br>120:2,20<br><b>quote</b> 296:12<br>300:12 | 177:21 184:6<br>185:1 186:24<br>189:22 190:24<br>191:23 198:6<br>211:16 213:10<br>214:11 216:25<br>219:18 221:9,20<br>224:14,17 226:10<br>243:4 244:25<br>245:8,11 247:8<br>263:2 283:8<br>285:25 286:19<br>292:5 298:25<br>303:6,11,15<br>338:22 339:2,6<br>357:17,22,25<br>358:15 359:2,7,14<br>362:21 364:16<br>365:5,19,22<br>366:21 368:8,11<br>370:8 371:4,9<br>372:4,13 373:20<br><b>rafalski's</b> 15:14<br>247:4<br><b>rafferty</b> 4:17<br><b>raise</b> 137:8 149:19<br><b>raised</b> 62:24<br>133:17 152:22<br>154:6<br><b>ralph</b> 362:16<br><b>ran</b> 83:11 203:15<br>330:20<br><b>random</b> 294:12<br>350:4,9,19 351:2,3<br><b>range</b> 54:7 252:5<br><b>ranked</b> 153:3<br><b>rannazzisi</b> 15:25<br>129:12,14,15<br>302:15<br><b>rapidly</b> 152:9 | <b>rare</b> 77:12<br><b>rate</b> 115:25 116:5<br>116:10 194:23<br><b>ratio</b> 128:14 335:2<br>353:7<br><b>ratios</b> 351:21<br><b>raw</b> 176:2<br><b>reach</b> 48:19<br><b>reaching</b> 316:7<br>337:4,11<br><b>read</b> 28:17,18<br>29:15 39:23,25<br>40:7,8,12,13 43:19<br>100:24 127:14<br>129:4 143:12<br>144:5 157:12<br>158:21,24 159:2,3<br>192:13,16 194:3<br>212:10,13 218:20<br>219:10 220:1,10<br>221:4,16 222:9,13<br>222:21,25 223:2<br>223:17,21,23<br>224:17,22,25,25<br>235:3 237:14<br>244:10 253:15<br>275:11 290:6,11<br>290:24 297:23<br>326:24,25 371:5,6<br>371:12 372:5,6,17<br><b>readily</b> 352:11<br><b>reading</b> 40:23<br>41:2 59:9 100:4<br>139:2 219:3 282:4<br>299:11 351:21<br>370:19<br><b>reads</b> 194:21<br><b>ready</b> 296:9<br><b>real</b> 51:11 82:23<br>198:18 329:5 |
|   | <b>r</b>   |  |   |
|   | <b>r</b> 2:1 3:1 4:1 5:1<br>6:1 7:1 8:1,17 9:1<br>9:15,17 10:1 11:1<br>369:1<br><b>rafalski</b> 1:16 13:4<br>13:21 15:6,21<br>21:5 22:4 23:10<br>23:19 24:1,6,19,23<br>41:3 54:3 56:15<br>74:13,23 83:6<br>105:18 138:5<br>150:20 160:23<br>161:16 163:12<br>164:6 168:7   |  |   |

|                           |                           |                           |                           |
|---------------------------|---------------------------|---------------------------|---------------------------|
| <b>realization</b> 330:8  | 191:1,5 195:18            | 189:24 195:22             | 274:1 299:8 303:4         |
| <b>realize</b> 105:18     | 197:19,20,21              | 206:11 249:3              | 303:7,12,17               |
| 330:7,8                   | 202:4 205:13              | 302:13 324:21             | 338:20,23 339:3           |
| <b>really</b> 33:12 36:21 | 206:3 219:3               | 325:11 342:23             | 343:8 345:14              |
| 54:23 78:3 87:21          | 223:23 224:25             | 343:4,7 347:20            | 357:18,23 358:17          |
| 114:22 119:6              | 226:1 227:10              | 362:7                     | 358:20,22,24              |
| 132:21 133:6              | 228:11 231:12             | <b>receiving</b> 103:22   | 359:3,8,18 360:7          |
| 143:10 149:9              | 233:22 235:18             | <b>recite</b> 336:21      | 360:14 367:13,15          |
| 154:10 162:20             | 237:17 243:20,23          | <b>recited</b> 224:10     | 367:17 368:9              |
| 169:6 191:20              | 244:19 250:12,19          | <b>reciting</b> 202:23    | 372:9                     |
| 226:11,13 238:2           | 252:2 261:2 262:4         | <b>reclassification</b>   | <b>recordkeeping</b>      |
| 242:16 325:4              | 264:15 271:6,10           | 101:15                    | 77:14 216:11              |
| 361:20                    | 272:11 275:19             | <b>recognized</b> 98:20   | <b>records</b> 46:1 48:25 |
| <b>realtime</b> 1:23      | 282:4 283:15              | 194:6                     | 49:15 146:20              |
| 11:11,14 12:1,6           | 292:16 294:6              | <b>recollection</b> 42:18 | 215:1,6,7 216:9,10        |
| 22:6 23:2 176:18          | 295:20 297:7,22           | 51:5,11 128:25            | 216:18,19 225:12          |
| <b>reask</b> 32:7         | 298:20 301:4,18           | 139:11 140:25             | 226:17 229:21,23          |
| <b>reason</b> 27:10,15    | 301:23 306:20             | 143:15 202:6              | 230:3,10,14 234:8         |
| 91:6 126:8 130:7          | 312:13 313:3,8            | 203:16 206:5              | 249:1 250:8,10            |
| 132:10,11 171:3           | 320:12,14,15,18           | 219:1,10 227:11           | 259:5 271:5               |
| 179:12 239:21             | 320:22 321:2,4,25         | 228:2,3 234:2,8           | 279:14 280:2              |
| 248:22 249:5              | 322:6,12,16               | 297:11 301:25             | 292:9 329:6 344:4         |
| 294:24 363:8              | 323:16 324:6,16           | 302:6,18,20 303:1         | 345:18 346:4,7,12         |
| 370:14 372:8              | 325:13,14 327:19          | 349:13 351:15             | 346:16 347:4              |
| 373:3                     | 327:23 328:1,4            | 357:10                    | 348:21 349:10,12          |
| <b>reasonable</b> 39:7    | 333:13 339:16             | <b>recommend</b>          | 352:19                    |
| 128:19 131:18             | 340:8,23 343:8            | 113:17                    | <b>recovering</b> 342:5   |
| 132:4                     | 347:25 348:21             | <b>recommendations</b>    | <b>red</b> 149:8,19       |
| <b>reasonableness</b>     | 349:8 350:14              | 17:11 190:17              | 151:16                    |
| 346:13                    | <b>recap</b> 350:6        | 191:12,25                 | <b>reddwerx</b> 321:23    |
| <b>reasoning</b> 179:10   | <b>receipt</b> 188:19     | <b>recommended</b>        | 322:1                     |
| <b>reasons</b> 352:21     | 370:18                    | 239:8                     | <b>reduced</b> 369:10     |
| 353:17                    | <b>receive</b> 37:19 38:4 | <b>reconvened</b>         | <b>reductions</b> 317:13  |
| <b>recalcitrant</b> 78:3  | <b>received</b> 38:5      | 368:13                    | 317:14                    |
| <b>recall</b> 39:15 42:16 | 91:20 127:8               | <b>record</b> 23:16,22    | <b>reevaluate</b> 275:7   |
| 50:13 113:22              | 144:13 152:16             | 43:5 82:25 83:4           | 276:11 277:1              |
| 127:15,25 138:6           | 171:21 172:6,16           | 127:20 160:7,12           | <b>reevaluating</b>       |
| 142:2 144:14              | 172:20 176:6,8,10         | 163:20 164:1,5            | 275:11 276:10,16          |
| 145:22,22 151:2           | 177:9 182:5               | 224:8 230:20              | 277:1                     |
| 168:19,25 183:22          | 185:23 187:4,10           | 235:3 245:3,7,12          | <b>refer</b> 164:15       |
| 183:24 185:14             | 187:16,22 188:5           | 251:21 253:15             | 232:18                    |

|   |   |   |  |
|---|---|---|--|
| <b>reference</b> 21:6<br>72:5 237:9,13<br>301:13 311:25<br>315:4 330:2<br>342:19 370:7<br>371:2 372:2<br><b>referenced</b> 330:3<br>371:11 372:15<br><b>references</b> 313:25<br>319:1<br><b>referencing</b><br>329:11<br><b>referred</b> 193:12<br>193:17,19<br><b>referring</b> 105:12<br>148:18 196:11<br>254:19 267:19<br>329:13<br><b>refers</b> 195:1<br>297:19 308:13<br><b>refine</b> 35:17<br><b>reflect</b> 165:13<br>207:20 236:22<br>242:7<br><b>reflected</b> 232:1<br>235:25 236:6<br>241:2<br><b>reflecting</b> 139:19<br>293:16<br><b>reflects</b> 172:22<br>196:9 242:4<br><b>reformulation</b><br>153:20<br><b>refresh</b> 51:10<br>128:25<br><b>refusing</b> 194:1<br><b>regard</b> 151:6<br><b>regarding</b> 50:20<br>64:22 65:4,18<br>195:20 247:10<br>264:9 306:1 | 320:23<br><b>regards</b> 45:24<br>85:21 95:21 96:5<br>102:22 111:24<br>154:22 166:1<br>172:3 174:7<br>178:22 218:14<br>230:21 244:20<br>266:7 282:5,25<br>283:2 294:3 295:3<br>295:12 305:3<br>312:13 314:17<br>315:7 318:5<br>321:11 322:25<br>323:3 340:5 341:2<br>341:5 343:16<br>344:7,15 352:20<br>353:16,21 354:21<br><b>regions</b> 135:16<br><b>register</b> 94:8,15<br><b>registered</b> 1:24<br>22:6 23:2 247:23<br>249:12,18 257:6,9<br>257:14 258:16,23<br>301:6 310:1<br><b>registrant</b> 67:9<br>68:5,7,13 71:15<br>72:12,13 73:2,13<br>75:18,21,24 76:2<br>77:8,22 78:3,8<br>79:9,10,15 80:3<br>81:4,8,11,17 82:6<br>82:12 83:11,15<br>85:7 87:19 88:20<br>112:21 113:9,25<br>114:1,4 215:8,25<br>258:4 259:7,8<br>260:12,17,18,23<br>264:9,17 270:1<br>278:15 300:7,10<br>300:13,14,22 | 301:7,20 302:20<br>327:16<br><b>registrant's</b> 67:24<br>69:16 84:23<br><b>registrants</b> 68:16<br>70:10 73:16 79:22<br>79:23 87:3,11<br>118:4 140:19<br>142:16 167:8<br>215:4 217:1,8<br>251:6 259:21<br>261:9 283:1,3<br>325:25 326:18<br>327:3 347:8<br><b>registration</b> 68:9<br>70:18 72:15 193:8<br>198:14 246:16<br>247:24 248:1,2,3<br>248:10 249:3<br>250:4 260:25<br>263:25 264:18,20<br>265:7,9 266:18<br>311:17<br><b>registrations</b><br>246:21 247:17,19<br>248:6 261:11<br>311:7<br><b>regs</b> 112:10<br><b>regular</b> 249:25<br>321:11<br><b>regulate</b> 92:4<br><b>regulation</b> 68:19<br>69:3,8,9,13,19,24<br>70:1,4,5,17,21<br>71:5 86:25 87:10<br>88:10 89:19 90:11<br>90:13 91:22 94:7<br>100:11,15 102:10<br>102:11 103:8<br>112:8,19 113:2<br>158:18 161:18 | 192:4 213:22<br>263:22 326:7,13<br>327:7<br><b>regulations</b> 46:17<br>47:17 48:21 64:23<br>65:5 66:15 67:10<br>67:18 68:1,8,12,12<br>68:13,20 71:7,19<br>71:21 72:14 76:4<br>77:9 79:18 80:2<br>81:17,22 82:2,3,4<br>82:16 85:8,17<br>86:1,11 87:5,14<br>88:4,11,11 89:20<br>93:18 103:25<br>109:12 110:22<br>111:12 112:16<br>113:6 130:2<br>158:17 162:3<br>165:20 194:18<br>211:25 216:21<br>217:7,14 258:5,14<br>263:20 281:23<br>282:6 283:3<br>284:22 325:24<br>326:17 327:2<br><b>regulatory</b> 13:16<br>83:17 191:24<br>251:9 274:8 276:9<br>299:23 312:7<br>326:2,19 327:4<br>348:17<br><b>reject</b> 117:23,25<br><b>relate</b> 105:19<br>340:2<br><b>related</b> 32:1 46:1<br>65:14 210:2<br>230:14 235:2<br>247:9 263:13,21<br>280:2 282:9<br>293:20 345:7,19 |
|---|---|---|--|

## [relates - reports]

Page 53

|  |   |  |   |
|--|---|--|---|
| <b>relates</b> 1:11<br>261:20  | 263:11 268:17,25<br>271:14 272:9  | 163:1 164:7<br>166:13,25 169:16  | 313:14,16 315:8<br>319:1,23 328:15  |
| <b>relating</b> 30:20<br>43:20,25 67:10<br>130:1 142:9<br>165:20 206:23<br>221:25 228:8<br>229:23 244:17<br>292:6,13 338:11<br>339:15 343:11<br>344:3,22 345:12<br>346:1 | 280:11 282:18<br>286:1 292:23<br>302:5 322:20<br>361:18 363:11<br><b>remembered</b><br>262:9<br><b>reminded</b> 29:8<br><b>reminder</b> 303:18<br><b>remote</b> 1:15 11:11<br>11:14 12:1,6<br>17:15 27:9 304:13<br><b>remotely</b> 2:2 3:2<br>4:2 5:2 6:2 7:2 8:2<br>9:2 10:2 11:2 23:9<br><b>renaissance</b> 24:13<br><b>reopened</b> 203:12<br><b>repeat</b> 27:12 199:4<br>269:7 303:24<br>326:22 335:7<br><b>rephrase</b> 27:17<br><b>replicate</b> 49:19,24<br><b>report</b> 13:15 14:6<br>14:9 17:10 31:19<br>31:21,24 32:14,17<br>32:20,25 33:7<br>34:1,6,15 36:1<br>37:6,7,15,20 38:13<br>38:22 39:18 42:2<br>43:9,15,19,25 44:4<br>49:19 50:2 51:13<br>51:16 52:4,6,16,21<br>64:17 68:23 69:3<br>69:6 75:12 84:21<br>98:12,14 100:24<br>101:23 104:22<br>105:7,9 107:1<br>110:6 111:18<br>113:19 114:23,23<br>117:24 162:7,9 | 170:8 173:4,25<br>174:9,25 175:11<br>175:13 183:16<br>190:15 191:2,8<br>194:19,20 195:12<br>196:11 201:25<br>202:3,4 208:17<br>218:17 220:2,2,6<br>223:24 224:4<br>228:5,12 231:6,15<br>232:1,5,19,24<br>233:10,13 234:5<br>234:20,24 235:9<br>235:15,25 236:7<br>236:11,23,25<br>237:2,7,19 238:8<br>238:11,14,18<br>239:5 241:6,10,14<br>241:15,24 242:9<br>242:10,15 243:7<br>243:12,15,19<br>244:18 245:19<br>246:2,7,9 248:24<br>252:4 254:18<br>256:8 267:2,10,13<br>267:21 268:16,22<br>270:14 271:1<br>276:6 277:21<br>280:8,11 281:14<br>281:25 283:25<br>285:24 292:5,12<br>292:17,20,25<br>293:18 298:22<br>299:3,4,15 301:8<br>301:16 302:2<br>306:24 307:4,9,18<br>308:12,15,24<br>309:8,11,12 310:1<br>310:13 311:24 | 328:23 330:12,14<br>330:24 331:8<br>333:17 334:2<br>335:6,8,12,24<br>337:9 339:25<br>340:4,9 341:1,7<br>342:18,22 343:3<br>343:14 347:23<br>348:10 349:16,17<br>349:21 350:25<br>351:10 352:10,23<br>352:25 353:14,24<br>353:25 354:1,15<br>354:18 357:5,8<br><b>reported</b> 1:22<br>47:18 194:11<br>232:15 234:11,20<br>285:25 286:10<br><b>reporter</b> 1:23,25<br>22:6,7 23:2,3,22<br>56:10 74:16,20,22<br>75:3 101:5,9<br>104:15 125:13<br>134:8 182:13<br>189:8,14 196:5<br>237:22 248:17,20<br>253:13 273:24<br>304:22 323:2<br>336:12 338:18<br>342:25 358:11,14<br>362:2 371:7<br><b>reporting</b> 295:13<br>295:14,15<br><b>reports</b> 39:17 50:7<br>74:7 75:16,20<br>99:3 105:11<br>126:25 169:19,20<br>192:8 200:5<br>208:21 218:9 |

## [reports - review]

Page 54

|  |  |  |   |
|--|--|--|---|
| 219:7 221:21,24<br>222:6 223:18<br>224:18 225:1,10<br>225:15,19,24<br>226:6,14 232:20<br>233:4,16,17,20,21<br>233:25 234:12<br>238:4,22 274:25<br>275:12 329:8<br>340:11<br><b>represent</b> 24:7<br>169:15 185:7<br>203:2 204:17<br>275:25 303:19<br>339:9<br><b>representation</b><br>81:12<br><b>represents</b> 369:11<br><b>request</b> 33:17,18<br>37:23 67:15 74:15<br>150:9 159:3<br>270:21 277:25<br>361:6 372:9,11<br><b>requested</b> 173:13<br><b>requests</b> 295:17<br><b>require</b> 104:7<br>113:9 161:18<br><b>required</b> 72:15<br>151:18 194:18<br>215:6 216:10<br>217:6 370:25<br><b>requirement</b><br>70:19 88:2 251:9<br>278:13<br><b>requirements</b><br>87:22 216:20<br><b>requires</b> 103:8,9<br>326:7<br><b>reread</b> 226:20<br>302:3 | <b>rescheduled</b><br>251:25 343:22<br><b>rescheduling</b><br>252:12<br><b>research</b> 10:6<br>45:25 92:3,13,20<br>96:3 114:2 280:14<br>281:12 282:1<br><b>reserve</b> 160:18<br>338:12<br><b>reserved</b> 360:12<br><b>reserving</b> 360:4<br><b>residents</b> 207:25<br><b>resolved</b> 337:23<br><b>resources</b> 270:4<br><b>respect</b> 40:17<br>41:22 43:12 51:23<br>69:13,15 70:22<br>84:3 93:18 103:1<br>109:14 110:15,17<br>124:9 135:20<br>143:24 147:2<br>156:4 157:18<br>204:20 223:7<br>256:25 257:19<br>310:16 311:1<br>314:23 324:9,21<br>325:10,12<br><b>respective</b> 22:3<br>136:14<br><b>respond</b> 226:13<br><b>responded</b> 302:1<br>337:2<br><b>responding</b> 144:12<br>259:16 263:4<br>327:10<br><b>responds</b> 291:19<br><b>response</b> 35:17<br>78:4 263:20<br>302:11 317:12<br>327:24 328:2 | 336:24 337:19<br>338:5 342:7 349:6<br>360:25<br><b>responses</b> 32:9<br>307:17 308:11,15<br>308:19 309:2,4,7<br>309:10,11,14,16<br>309:23 313:9<br>337:21<br><b>responsibilities</b><br>81:22 266:5<br><b>responsibility</b><br>69:16 103:10<br>174:12,17 175:7<br>177:24 254:8,14<br>257:23 261:21,25<br>263:13,14 264:10<br>264:20,24,25<br>265:3,16,24 266:2<br>266:6,15<br><b>responsible</b> 63:2<br>63:10 91:18 104:8<br>108:18 156:21<br>167:11 173:10<br>174:2,3,20 175:6<br>184:13 260:9<br>264:23 355:6,15<br><b>responsive</b> 261:13<br>277:16 295:16<br><b>restate</b> 34:11<br>324:13<br><b>restricted</b> 60:21<br><b>result</b> 78:16<br>109:19 183:8<br>193:25 318:7<br>338:1 356:6<br>369:17<br><b>resulted</b> 355:9<br><b>resulting</b> 98:17<br><b>results</b> 33:13<br>48:17,17,19,23 | 49:1,7,10,11,12<br>50:25 73:20 114:6<br>114:12,14,22<br>115:9,15,19<br>162:20,22 255:11<br>297:15<br><b>retain</b> 229:13,21<br>230:9 345:18<br>346:7<br><b>retained</b> 30:24<br>31:11 53:11 229:9<br>230:2 231:10<br>347:2<br><b>retainer</b> 31:2,5,7<br>53:16<br><b>retired</b> 55:15,25<br>141:12<br><b>retrieved</b> 278:10<br><b>return</b> 361:14<br><b>returned</b> 370:18<br><b>revenue</b> 56:5<br><b>revert</b> 277:7<br><b>review</b> 38:9 39:10<br>39:20 45:25 48:24<br>48:25 49:14 52:15<br>94:9,14 100:18<br>123:15 127:13<br>128:6 156:18<br>160:1 178:23,24<br>179:11 184:17<br>210:1,7 211:14<br>215:1,7 216:14<br>220:24 225:14<br>226:16 233:24<br>234:5 236:8<br>238:18,22 275:12<br>278:18 279:11<br>281:17 282:19<br>292:9 296:12<br>308:16 310:11,21<br>310:23 321:19,19 |
|--|--|--|---|

|                          |                   |                            |                           |
|--------------------------|-------------------|----------------------------|---------------------------|
| 332:10 348:23            | 72:21 73:4 75:9   | 218:3,23 219:12            | 21:6 25:15 50:21          |
| 349:20 350:5             | 75:21 82:1 85:13  | 219:13 227:9               | 51:21 52:10 53:2          |
| 351:19,20 352:4          | 86:5 87:21 92:10  | 228:9,16 232:4             | 157:8 158:1 167:9         |
| 352:14,20,25             | 93:14,19 94:4,17  | 233:4,10 234:2,8           | 245:14,23 246:1,4         |
| 360:19 370:12            | 99:10,25 101:14   | 234:23 235:25              | 246:5,6,21 247:13         |
| 371:1 372:1              | 102:1 103:23      | 236:7,24 239:15            | 248:8,22 249:15           |
| <b>reviewed</b> 38:24    | 106:25 109:4      | 239:19 240:17              | 250:12 251:6,13           |
| 39:2 46:21 48:16         | 112:10 115:22     | 243:24 244:25              | 252:2 253:19,20           |
| 78:23 159:25             | 119:21 121:13,14  | 248:1 253:21               | 253:21 254:1,8            |
| 169:13 170:9             | 122:15 125:3      | 256:12 257:5,8,11          | 255:1,23 256:9,20         |
| 180:5 223:3              | 128:19,22 130:11  | 257:20 258:4               | 256:24 257:2,3,24         |
| 225:12 235:13            | 130:14,25 133:4   | 264:3 265:1 268:4          | 257:25 258:24             |
| 236:3,23 249:1           | 133:16 134:23     | 272:11 273:9               | 259:7 266:20,25           |
| 271:4,7 278:6,10         | 135:18 136:1,16   | 283:15,24 284:9            | 267:2 268:23              |
| 278:14 320:10            | 137:14 140:1      | 284:23 289:21              | 270:17,19 271:6           |
| 321:10 323:8,11          | 142:21,23 144:1   | 290:24 292:8,14            | 273:2 274:8 276:3         |
| 328:5 332:13,14          | 145:1 146:18      | 293:5,12 294:20            | 276:9,10 279:11           |
| 349:8 350:17,17          | 148:8,10,19       | 296:3 302:7                | 280:9 283:14              |
| 350:24                   | 149:15 156:12     | 305:12 306:13              | 284:12,21,25              |
| <b>reviewing</b> 117:2   | 162:12 165:3,22   | 313:12 314:3,23            | 285:25 286:15,25          |
| 179:3 183:22             | 165:23 166:10     | 315:6,17 316:9             | 287:10,17,25              |
| 218:18 226:15            | 168:3 169:22      | 319:6 324:11               | 288:5,11,14,17,19         |
| 231:4 234:9              | 170:11,12,14,19   | 327:21 329:24              | 288:24 289:4,9,14         |
| 250:13 259:5             | 171:17 173:1,11   | 332:2 335:19               | 291:7 292:6,13,21         |
| 282:18 330:11            | 173:19 174:22     | 344:25 347:21              | 293:11,16 295:23          |
| 343:8                    | 176:4,11 180:8,12 | 350:13 362:5,7,12          | 297:18 298:9              |
| <b>revoked</b> 311:6,11  | 180:19,22 181:5   | 362:23 364:9,19            | 299:18,21 300:18          |
| 311:16,21                | 182:1,11 184:19   | 364:24 365:21              | 300:22,24 301:2,3         |
| <b>rice</b> 10:7,15      | 185:14 186:9      | 366:18                     | 301:13,15,19,21           |
| <b>rico</b> 3:19         | 188:17 189:20     | <b>rights</b> 160:18       | <b>riteaid</b> 294:21     |
| <b>rid</b> 346:16        | 190:25 191:16     | 360:11                     | <b>riteaid.com</b> 18:6   |
| <b>riedman</b> 11:5      | 194:15 195:3,15   | <b>rigid</b> 232:18,20     | <b>road</b> 2:9 11:20     |
| <b>right</b> 25:10 30:23 | 196:15 197:11,23  | 233:4,10,12                | 82:15 181:5,17            |
| 31:12 33:9 36:25         | 199:18 200:21     | <b>ring</b> 127:18         | 185:22 186:3,10           |
| 38:12 45:7 53:6          | 203:19 204:13,19  | <b>rite</b> 8:4,4,5,7 18:1 | 187:5,10,16 188:5         |
| 54:25 55:6 56:4          | 205:15 206:21     | 18:4,7,9,12,13,16          | 188:20 195:21             |
| 56:19 57:3 58:8          | 207:16,24 208:17  | 18:17,20,21,24             | 196:17                    |
| 58:10,14,25 62:22        | 208:23 211:20     | 19:1,5,8,9,12,13           | <b>role</b> 28:23,24 29:2 |
| 63:16 64:10,16           | 212:3,5,19 213:7  | 19:16,17,20,21,24          | 67:19 93:5 217:13         |
| 66:20 67:21 68:10        | 214:17 215:5,10   | 20:1,5,8,9,12,13           | <b>roman</b> 297:14       |
| 69:17,22 71:6,24         | 215:18 216:9      | 20:15,16,17,20,21          |                           |

[room - searched]

Page 56

|  |  |  |  |
|--|--|--|--|
| <b>room</b> 24:12 119:1<br>361:1<br><b>rose</b> 66:5<br><b>roseland</b> 11:21<br><b>ross</b> 9:8<br><b>roughly</b> 53:17<br>54:14 57:15 85:17<br>121:2 126:14<br>177:9 189:21<br><b>round</b> 171:21<br>181:19<br><b>rounded</b> 182:7<br><b>routine</b> 211:17,23<br><b>ruiz</b> 7:7 13:9 339:5<br>339:8 343:2<br>344:11 347:19<br>348:3,4,7 351:11<br>353:6 357:12<br>358:3,5<br><b>rule</b> 84:12 260:25<br><b>rules</b> 23:6 24:22<br>27:8 165:20<br>269:12 371:5<br>372:5<br><b>ruling</b> 66:6 71:2<br><b>run</b> 29:12 30:2<br>83:10,14 84:22<br>96:17 165:17<br>274:25 275:12<br>279:10 330:21<br>331:2<br><b>running</b> 49:12,21<br>54:23 83:21<br>340:13<br><b>runs</b> 329:21<br><b>rush</b> 155:19<br><b>rx</b> 7:5 | 68:25 302:17<br>370:15 372:8,8<br>373:3<br><b>safe</b> 156:4,5<br>363:12<br><b>safescript</b> 122:15<br>124:23 135:20<br>136:1 138:12,20<br>140:1 356:6<br><b>salary</b> 53:21<br><b>sales</b> 145:15<br><b>salesperson</b> 40:14<br><b>sam</b> 4:8<br><b>san</b> 3:19<br><b>save</b> 348:5<br><b>saw</b> 43:19 143:13<br>155:18 206:11<br>272:8 301:12<br>328:16 329:2,6<br>349:11<br><b>saying</b> 36:14,15<br>38:24 52:19 62:12<br>80:8 81:16 89:8<br>89:11 101:1 102:9<br>102:16 103:4<br>104:10 110:8<br>111:1,15,15<br>126:14 130:4<br>134:11 135:1,5<br>137:18,19 145:17<br>152:11,22 175:5<br>175:17 186:20<br>189:9 193:4<br>213:20 222:15<br>224:5 241:17<br>243:23 244:15<br>254:3 256:8 257:2<br>259:3,25 264:16<br>265:13 271:18<br>279:2 282:9<br>290:20 295:8 | 315:24 321:7,9<br>324:1,4,19 331:22<br>332:4 333:7<br>350:12 351:1<br>362:20 363:8<br>367:24<br><b>says</b> 31:19 87:10<br>87:18 88:3,5,15<br>90:13,17 131:7<br>137:21 139:3<br>144:17 146:20<br>147:13 148:16<br>168:16 190:13,15<br>190:18 191:15<br>192:3,8,21 193:25<br>195:16 198:2,25<br>200:3 201:2<br>206:24 207:19<br>208:3,7 215:13<br>216:23 231:11<br>245:23 255:10<br>256:1,3 270:19<br>274:21 277:24<br>285:10 286:10<br>287:4 291:5<br>294:16,21 295:15<br>296:24 298:7<br>299:21 307:16<br>341:11,19 350:3<br>351:18 352:3<br><b>scale</b> 316:7,18,18<br><b>scanned</b> 338:14<br><b>scatter</b> 303:22<br><b>scenario</b> 279:9<br><b>schedule</b> 38:13,16<br>38:20 101:3,16<br>139:12 159:24<br>228:17,18,18<br>251:13,19,22,23<br>252:15,17,18,20<br>252:23 253:1,3,4,5 | 253:6,7,11,22<br>254:10 307:8,12<br>307:25 321:22<br>334:21 343:22<br>349:16,19 359:20<br><b>schedules</b> 32:15<br><b>schein</b> 9:4<br><b>scope</b> 138:25<br>158:1 216:19<br><b>scott</b> 6:6 24:7<br>45:14,14 80:16<br>358:2 367:15<br>368:3<br><b>screen</b> 168:7,12,15<br>176:25 185:1,9<br>186:24 187:3<br>190:13 196:24<br>214:18 221:12<br>308:1<br><b>screens</b> 176:13<br>185:3<br><b>script</b> 156:4<br><b>script's</b> 156:5<br><b>scripts</b> 43:2,7<br>95:12 97:10<br>107:25 108:5,10<br>108:10 135:10<br>139:6 140:7,14<br>157:4,6<br><b>scroll</b> 171:10<br>181:21 197:6<br>200:11 202:21<br>219:14<br><b>scrutiny</b> 151:19<br>153:5<br><b>seal</b> 371:15 372:21<br><b>search</b> 40:22<br>60:19 280:1 294:1<br>333:6<br><b>searched</b> 293:19<br>333:1 |
| <b>s</b>   |  |  |  |
| <b>s</b> 2:1 3:1 4:1 5:1<br>6:1 7:1 8:1 9:1<br>10:1 11:1 22:1  |  |  |  |

## [searches - september]

Page 57

|  |  |   |  |
|--|--|---|--|
| <b>searches</b> 37:23,25<br>38:1 293:24 333:4<br><b>searching</b> 293:20<br><b>sec</b> 214:6<br><b>second</b> 61:4 102:2<br>139:2 143:13<br>163:4,21 165:10<br>166:2 168:8<br>184:21 197:6<br>203:11,12 231:16<br>253:25 283:21<br>290:10 293:1<br>294:10 314:4<br>321:1 350:3<br>352:18<br><b>secondary</b> 38:1<br>260:14<br><b>secret</b> 53:23<br><b>section</b> 40:10<br>42:10 79:24 86:10<br>192:17 212:16<br>235:15 237:18<br>238:14 245:22<br>255:7,16 256:1,18<br>283:23 284:3<br>286:9,9 298:3,6<br>336:16<br><b>sections</b> 41:1<br>87:23 88:16 293:4<br><b>security</b> 55:19,23<br>56:5 67:24 68:4<br>68:12,16,20 69:14<br>87:22 88:19,19<br><b>see</b> 31:18 37:2<br>51:12,14,18 57:22<br>64:18,25 80:15<br>86:10 88:21 94:10<br>99:14 107:1,7<br>109:25 115:4,7,23<br>119:11 123:4<br>133:11,13,14 | 134:10,19 136:4,8<br>136:10,22 138:3<br>139:1,1,17 140:6<br>141:17 146:22<br>147:19 149:2,6,9<br>151:10 152:2,3<br>153:13 154:1<br>155:4,8,9 161:2<br>164:13,17 168:7<br>168:12 169:24<br>170:2,11,13<br>171:10 172:14,15<br>176:7 177:2<br>180:19,25 181:10<br>181:14 184:25<br>185:8,11,20,24,25<br>186:8,22,22,23,25<br>187:3,9,11,14,18<br>187:21 188:8<br>190:7,10,13,16,21<br>191:8,14,15,23<br>192:1,5,6 193:1<br>195:2,8,13 196:23<br>197:1,4,7,8,12<br>198:20,23 199:9<br>199:15,17,21,25<br>200:15,22 201:6,9<br>202:18,19,21,25<br>208:3,5,9 212:20<br>214:18 216:12<br>217:5,15,16<br>221:25 222:4<br>232:14 237:10<br>245:23 246:11<br>250:3 252:6 255:1<br>255:8,14 256:1,5<br>259:5 260:22<br>270:17,22 271:10<br>271:12,20,22<br>274:4,5,9,13,16,18<br>275:2,8,14,16 | 276:1,1,13,20<br>277:23 278:1,19<br>279:7,8 280:14<br>281:10,12 282:1<br>283:22,24 284:7<br>284:10 287:1,7,14<br>287:21,24 288:7<br>288:10,17,22<br>289:2,7,12 290:1,5<br>290:8,20,22 291:8<br>291:15,16,17,23<br>291:25 292:5,11<br>292:20 293:10<br>294:13,18,22<br>296:11,14,17<br>297:2,16 298:4,9<br>298:14 299:12,13<br>299:19,24 300:11<br>301:1,13 307:20<br>309:13 314:3<br>316:25 318:21<br>324:20 328:6<br>330:2 331:20<br>332:7 333:9 334:9<br>334:16 338:10<br>341:10 344:18<br>345:13 346:8<br>350:7 351:21<br>352:2,5,19,22<br>353:20,21 361:25<br>363:4,15<br><b>seeing</b> 127:4 151:2<br>152:25 169:1<br>176:12,15 183:22<br>191:5 227:10<br>228:4 233:22<br>272:10 292:23<br>294:6 295:20<br>297:22 301:4<br>313:3,9 320:22<br>321:2 322:16,20 | 327:23 348:21<br>349:8<br><b>seek</b> 82:12<br><b>seen</b> 120:7 168:14<br>169:18 190:23<br>196:4 197:15,18<br>233:3,8 260:5,17<br>275:17,20 292:2<br>297:20 298:18<br>301:14,19 322:24<br>323:24 324:3<br>362:18<br><b>self</b> 26:18 101:18<br>101:19,21 104:5<br>148:4<br><b>send</b> 275:13<br>291:20 304:21<br>338:16,17 364:7<br><b>senior</b> 274:7 276:8<br><b>sensabaugh</b> 5:7<br><b>sense</b> 42:3 54:16<br>58:23 78:13 191:6<br>200:17 244:13<br>290:7 336:9<br><b>sent</b> 151:9 272:21<br>358:7 360:20<br>362:20,21<br><b>sentence</b> 87:18<br>184:4,5 192:16<br>193:24 194:21<br>208:3 255:10<br>271:2 300:2,3,5,10<br>350:3 351:12,17<br><b>sentences</b> 350:2<br><b>separate</b> 31:7<br>161:23 246:20,21<br>247:18<br><b>separately</b> 308:18<br>308:19<br><b>september</b> 289:12<br>329:21 |
|--|--|---|--|

[sequence - sir]

Page 58

|                           |                           |                            |                            |
|---------------------------|---------------------------|----------------------------|----------------------------|
| <b>sequence</b> 296:7     | 221:12 297:1              | 295:18 347:4               | 316:25 356:14              |
| <b>series</b> 169:24      | 354:11,20,24              | <b>showed</b> 121:22       | <b>similarly</b> 292:11    |
| 198:23 199:2              | <b>sharp</b> 29:11 50:8   | 358:15                     | 354:23                     |
| 303:20 304:25             | 314:20                    | <b>showing</b> 190:7       | <b>simple</b> 53:1 109:5   |
| 306:18 312:23,24          | <b>sheet</b> 304:5 370:13 | 213:3 215:10               | 224:17 307:12              |
| <b>serve</b> 60:13        | 372:7,10,18 373:1         | <b>shown</b> 192:8 350:6   | 332:21                     |
| <b>served</b> 307:17      | <b>sheets</b> 304:6       | 370:16                     | <b>simpler</b> 80:2 111:9  |
| 308:11 309:2,7,11         | <b>sherrill</b> 329:7,9   | <b>shows</b> 50:8 90:8     | <b>simply</b> 336:21       |
| 309:14                    | <b>shift</b> 62:9 153:21  | 120:12 165:17              | <b>simultaneously</b>      |
| <b>server</b> 278:20      | <b>ship</b> 183:19        | 169:11 170:3               | 106:14                     |
| 279:1                     | <b>shipments</b> 16:24    | 195:5 201:7                | <b>sincerely</b> 370:21    |
| <b>servers</b> 279:13     | 17:6 162:18               | 202:15 204:20              | <b>single</b> 43:6 221:25  |
| <b>service</b> 6:5 12:5   | 164:21 167:1              | 314:1                      | 333:9                      |
| 51:21 126:12              | 168:16 170:3,3            | <b>shut</b> 42:25 44:22    | <b>singular</b> 246:2      |
| <b>services</b> 7:5 58:16 | 183:17 184:1,7            | 45:5 108:4 151:9           | <b>sir</b> 25:21 26:1 27:5 |
| <b>set</b> 87:22 88:16    | 187:4 229:10              | <b>sic</b> 331:12 334:4    | 27:14,19,23 28:4           |
| 93:3 269:20 270:7         | 355:7,15,17               | <b>side</b> 83:9 146:10    | 30:6,14,18,21 32:6         |
| 306:9 360:17              | <b>shipped</b> 162:11     | 147:1 170:12               | 32:12 34:4,24              |
| <b>setting</b> 93:6       | 166:11 183:11             | 197:11 240:7               | 35:23 36:8 38:7            |
| <b>settlements</b> 336:2  | 211:1 321:13              | 273:19 363:18,19           | 38:22 41:18 43:4           |
| 336:7                     | 341:19,22,24              | <b>sign</b> 215:4          | 43:8,17,22 44:3,6          |
| <b>seven</b> 62:5 84:20   | 342:15 346:2              | <b>signature</b> 291:15    | 44:24 47:4,8,13            |
| 113:3 114:25              | <b>shipping</b> 328:19    | 369:22 370:14              | 48:15 50:3,14,18           |
| 185:23 205:8,18           | <b>shoppe</b> 172:14      | <b>signed</b> 31:5 53:15   | 50:22 53:5,9,20            |
| 229:11 230:4              | <b>short</b> 68:25 140:10 | 99:22 362:20               | 58:19 59:15,19             |
| 319:1,6,9,17,22           | 275:24 277:7              | 371:13 372:18              | 60:5 62:16,24              |
| 343:25 346:6              | 286:21                    | <b>significant</b> 65:12   | 66:13,23 67:6              |
| 358:8 359:11,25           | <b>shortcoming</b>        | 105:15 120:12              | 68:21 71:23 75:15          |
| 364:21                    | 218:17                    | 121:3 202:2                | 79:13 87:1 88:5,9          |
| <b>seventy</b> 58:7       | <b>shortly</b> 28:10      | 225:11 242:20              | 88:22 90:12 93:8           |
| 172:21 176:8              | <b>shot</b> 303:22        | 335:6,9 346:21             | 94:6,20 98:11              |
| 177:15                    | <b>shout</b> 298:7        | <b>significantly</b> 209:7 | 100:12 101:9               |
| <b>severe</b> 346:19      | <b>show</b> 66:5 72:20    | <b>signing</b> 370:19      | 104:14,16,16,17            |
| <b>shape</b> 43:12        | 78:20 80:13 155:9         | <b>signs</b> 145:4         | 107:8 112:14               |
| <b>shapira</b> 6:11 12:9  | 162:24 167:25             | <b>similar</b> 32:9 83:24  | 113:14,20 117:7            |
| <b>shapira.com</b> 6:16   | 169:12 184:19             | 99:4 100:8 119:11          | 118:6 119:13,19            |
| 6:17,18,19 12:14          | 186:23 191:18             | 131:3 169:20               | 121:20,21 122:13           |
| <b>share</b> 15:9 134:20  | 195:13 196:18             | 170:10 171:8               | 123:21 124:22              |
| 136:4,6,8,14              | 212:19 213:6              | 186:16 260:8               | 130:23 135:8,18            |
| 137:10,11 168:6,7         | 214:5 217:2,8,18          | 286:19 287:12,19           | 138:10,13 139:3            |
| 173:4,9 220:17            | 219:12 286:18             | 314:25 315:2               | 139:18,23 140:4            |

[sir - south]

Page 59

|  |  |   |  |
|--|--|---|--|
| 140:11 143:21<br>146:7,12 156:8,23<br>160:2 161:2<br>162:15,21 163:6<br>166:8,14 167:16<br>167:19 168:12<br>169:25 170:22<br>172:8,14 173:1,6<br>173:16 176:11<br>180:3,12 182:16<br>185:20 194:15<br>195:15 196:24<br>207:7,16 208:18<br>208:23 209:5<br>218:23 222:8,21<br>226:8,24 227:9,21<br>228:9,22 229:22<br>231:7 233:7<br>235:25 236:24<br>237:6 238:19<br>239:15,19 240:3<br>259:12 262:8<br>285:20 290:4,18<br>339:13 340:5,10<br>341:14 342:16<br>343:6 345:15<br>347:22 348:5,13<br>350:11 351:15<br>354:8 370:10<br><b>sit</b> 173:17 239:11<br>346:24<br><b>site</b> 72:25 73:4<br>75:6 77:13,15<br>142:14 213:14<br>216:8 346:23,24<br><b>sitting</b> 76:22<br>104:25 173:24<br>225:22 226:19<br>243:24 267:13<br>302:4,6 | <b>situation</b> 67:9<br>118:6 148:4,10<br><b>situations</b> 71:16<br>81:3 257:7<br><b>six</b> 42:15,16,21<br>51:19 63:7,13<br>64:5,6 66:20<br>140:8 164:25<br>165:7 166:6,12<br>172:21 176:8<br>177:15 180:18<br>181:7,24 182:1,3<br>187:23 188:6,24<br>200:23 202:16<br>206:25 256:2<br>314:8 346:5,15<br><b>sixteen</b> 137:9<br>140:7,8 201:3<br><b>sixty</b> 85:18 187:16<br>187:23 188:5,22<br>188:24 189:1,3,21<br>195:6 256:2<br><b>size</b> 90:15,20<br>112:16,24 189:6<br>323:14 331:15<br>333:11<br><b>skills</b> 144:18<br><b>skip</b> 88:14 139:15<br>153:11 191:17<br>342:17<br><b>slcg</b> 168:15,20<br>169:2,11<br><b>slew</b> 291:10<br><b>slight</b> 105:14,16<br><b>slightly</b> 121:13<br>294:4<br><b>slow</b> 273:25 283:6<br><b>small</b> 153:14<br>176:23<br><b>smallest</b> 170:13 | <b>social</b> 55:19,23<br>56:5<br><b>soft</b> 101:6<br><b>sold</b> 26:5<br><b>solely</b> 251:7<br><b>solids</b> 136:7<br><b>solutions</b> 11:8<br>370:1 373:1<br><b>som</b> 69:2,9,25 70:5<br>70:23 71:11,18,20<br>72:1,5,9 80:13<br>88:10 90:11<br>100:11,14 102:10<br>102:11 107:3<br>112:8,16 158:17<br>185:22 186:3,10<br>187:5,9,15 188:4<br>188:20 195:21<br>196:17 232:25<br>299:22<br><b>somebody</b> 61:19<br>84:22 130:5<br>144:15 168:2<br>210:15 324:4<br>325:19 338:9,9<br><b>someplace</b> 338:16<br><b>somewhat</b> 35:8<br><b>soms</b> 69:1 70:25<br>102:23,24 103:6<br>110:23 305:25<br>318:5 320:8<br>323:17 332:17<br>340:2 344:3,6,14<br><b>soon</b> 232:8<br><b>sooner</b> 176:25<br><b>sorry</b> 38:19 56:10<br>56:15 73:14 86:20<br>86:22 94:7,21<br>95:3 118:24<br>119:20 123:22<br>129:16 141:18 | 144:3 150:21<br>161:8 168:23<br>170:20 177:17<br>184:5 186:12<br>188:2,2 207:10<br>208:2 209:12<br>228:21 251:17<br>253:13 256:14<br>259:7 260:20<br>269:8 271:3 281:4<br>282:23 284:2<br>285:19 286:6,7<br>291:3 307:22,23<br>308:8 311:4<br>315:18 324:14<br>327:13,21 329:17<br>334:13 336:13<br>342:25 345:10<br>351:22,24 356:24<br>358:2,11<br><b>sort</b> 60:13 74:21<br>79:3 107:4 118:14<br>128:1 138:14<br>145:20 157:15,15<br>184:3 255:5 276:9<br>296:6 304:12<br>316:6,24 361:13<br><b>sorted</b> 299:10<br><b>sorts</b> 112:11<br><b>sought</b> 29:1<br><b>sound</b> 58:8 170:19<br>228:15 283:15<br>292:8,14 293:12<br>362:12<br><b>sounds</b> 81:10<br>131:17 144:20<br>289:22<br><b>source</b> 38:6 93:19<br><b>south</b> 4:19 10:9,17<br>181:10,13 205:5 |
|--|--|---|--|

[southern - starts]

Page 60

|  |  |  |  |
|--|--|--|--|
| <b>southern</b> 197:3<br>198:21 202:22<br><b>spaeder</b> 7:9<br><b>sparked</b> 100:1<br><b>speak</b> 37:10 70:20<br>119:6 147:8<br>189:17 213:22<br>215:22 243:9<br>281:11 307:2<br>362:22,22<br><b>speaker</b> 247:4<br><b>speaking</b> 46:18<br>48:22 56:16 57:16<br>57:18 68:6 71:15<br>71:22 75:19 83:17<br>85:24 97:16<br>107:17 118:16<br>129:7 132:23<br>142:15 145:21<br>148:6 149:24<br>150:13 153:15<br>162:13 193:8<br>205:23 211:22<br>217:4 224:13<br>236:14 243:5<br>269:25 310:24<br>320:21 322:9<br><b>speaks</b> 327:7<br><b>special</b> 9:16 60:9<br>60:12,18,25 61:5<br>61:20,22 62:3,13<br>66:14,17 118:21<br>118:24 119:9<br>126:9 262:16,20<br>263:5 364:12,23<br>366:2,14,18 367:1<br>367:6,8 368:1,4<br><b>specialmaster.law</b><br>9:21<br><b>specialty</b> 126:8 | <b>specific</b> 36:18 40:3<br>40:4,22,22 42:14<br>72:4 75:7 84:24<br>85:22 93:7 96:11<br>96:12 100:9<br>108:20 121:18<br>139:10 140:16<br>153:24 156:16<br>170:24 178:24<br>179:19 183:24<br>189:6 204:2 205:3<br>205:3 207:3<br>208:12,13 210:8<br>213:19 214:2<br>215:6,15,22<br>233:23 239:21<br>240:1,1,10,11,14<br>241:11,25 242:4<br>252:7 265:5<br>269:12 276:12<br>279:6,18 282:9,21<br>283:4 284:25<br>285:6 295:2,5<br>297:10 303:2<br>305:5,20,22<br>312:11,15 313:15<br>314:16 316:14<br>318:17 319:21<br>320:12,15 336:11<br>336:11 342:20<br>343:15 346:17<br>347:10 349:13<br>356:9<br><b>specifically</b> 43:15<br>61:5 70:11,16<br>72:9 80:25 85:11<br>102:22 107:6<br>114:3 135:19<br>156:7 162:2<br>168:19 169:1<br>197:19 216:22 | 226:16 231:9,11<br>233:1,18 243:7,21<br>244:3,6 246:9<br>250:15 258:10<br>264:15 266:12,14<br>267:16 268:17,20<br>269:2 270:7 271:9<br>271:13 272:10<br>275:19 281:19<br>283:17 293:7<br>295:9 298:20<br>301:2,3,4,20<br>307:15 320:6,8<br>327:8 333:12<br>343:11 344:6<br>348:24<br><b>specifics</b> 315:7<br><b>speculate</b> 131:23<br><b>speculation</b> 34:2<br><b>spend</b> 59:9<br><b>spent</b> 62:8 63:17<br>150:24 241:5,16<br>241:21,24 242:13<br>242:23 243:5<br>244:3,22 340:8,11<br>340:12<br><b>spoke</b> 243:12,14<br>282:22<br><b>spoken</b> 176:25<br>340:22 341:4<br><b>spot</b> 350:4,10,13<br>350:19 351:2,3<br><b>squad</b> 61:15<br><b>squads</b> 61:11,18<br><b>stakes</b> 33:3,10<br><b>stamp</b> 294:22<br><b>stamped</b> 197:10<br><b>stand</b> 272:22<br><b>standalone</b> 26:24<br>35:15 | <b>standard</b> 117:6<br>128:2 131:10<br><b>standards</b> 34:7,8<br>34:16 35:19,25<br>36:7,11,15 37:3<br>88:16 127:3<br>260:23 299:24<br><b>standing</b> 121:24<br><b>standpoint</b> 98:3<br><b>stands</b> 37:15<br>112:20 166:1<br>294:21<br><b>start</b> 29:16 55:8,8<br>73:18 125:21<br>126:16 132:5<br>133:23 140:22<br>179:3 263:6,8<br>281:10 285:23<br>290:6 318:25<br>359:15 360:3<br>361:17 362:5<br>363:21,22 365:10<br>365:14<br><b>started</b> 28:13<br>40:13 65:24 72:5<br>101:3,19,21<br>129:21,21,22<br>141:12 152:20<br>315:6 317:14<br>321:22,23 322:18<br>330:11 340:19<br><b>starting</b> 102:15<br>104:20 120:13<br>128:11 200:12<br>217:19 221:19<br>255:7 277:15<br>284:7 318:11<br>359:19 360:17<br>363:18 364:3<br><b>starts</b> 166:25<br>199:10 245:23 |
|--|--|--|--|

[starts - substantial]

Page 61

|  |   |  |   |
|--|---|--|---|
| 270:17 277:22<br>283:23 284:4,8<br>293:4 297:14<br>299:18 329:20<br>349:24<br><b>state</b> 23:4 28:6<br>31:3,4 53:23<br>127:2 131:6<br>145:19 196:10<br>200:5 202:11<br>237:7 310:6<br>345:22 346:25<br>369:4,23 371:10<br>372:15<br><b>stated</b> 49:14 100:3<br>146:16 157:12<br>174:25 329:1<br><b>statement</b> 26:10<br>27:4 34:20,24<br>35:12 36:5,8<br>41:17,25 43:23<br>44:3 45:11 46:11<br>47:9 48:3 50:4<br>53:14 60:15 64:25<br>65:7 66:18 67:5<br>67:12 69:21 77:5<br>90:24 92:9,16<br>95:22 96:21 98:6<br>98:21,22 109:3<br>120:23 135:5<br>138:17 146:7<br>150:1 158:11<br>162:1,8,16 165:2<br>173:14 176:3<br>178:8 179:8 180:7<br>182:25 183:6<br>184:10 199:7<br>201:18 202:13<br>210:9 211:6 214:1<br>218:12,16 223:12<br>226:22 234:15,22 | 239:13 240:15<br>264:17 265:21<br>269:16 272:19<br>277:17 282:12<br>292:18 293:14<br>310:14 311:8<br>319:4 324:25<br>328:15,23 329:5<br>332:16 345:15<br>347:16 348:13<br>359:17 360:13<br>371:13,14 372:19<br>372:19<br><b>states</b> 1:1 23:7<br>25:24 66:1 194:23<br>202:5,7 206:4<br><b>status</b> 99:14 204:6<br><b>statutes</b> 258:2<br><b>statutory</b> 258:1<br>259:2<br><b>stay</b> 276:16<br><b>stayed</b> 62:11<br>121:13<br><b>staying</b> 362:23<br><b>steep</b> 314:2<br><b>stenographic</b><br>23:22<br><b>stenotypy</b> 369:9<br><b>step</b> 54:12 78:5,14<br>258:7<br><b>steps</b> 77:3 79:3,10<br><b>steve</b> 237:10<br><b>stick</b> 40:9<br><b>stipulated</b> 22:2<br><b>stipulation</b> 23:8<br><b>stop</b> 360:12<br><b>stopped</b> 101:12<br>104:5 228:12<br>230:4 252:2<br>283:14,14 284:13<br>343:20 345:20 | 346:5<br><b>stopping</b> 232:7<br>240:19 359:23<br><b>store</b> 196:17 267:2<br>268:8 270:17,19<br>270:21 274:23<br>275:6 281:2<br><b>stores</b> 7:6 43:11<br>98:2 207:7 272:14<br>274:22 275:1,5<br>280:24 281:9<br>335:3<br><b>story</b> 227:14<br><b>straightened</b><br>283:20<br><b>stray</b> 179:20,21<br><b>stream</b> 11:11,14<br>12:1,6<br><b>streamline</b> 32:2<br><b>street</b> 4:19 5:8<br>7:10,22 8:12 97:2<br>157:9 158:8<br>171:17 181:10<br>192:12<br><b>strength</b> 133:20<br>140:17 154:21<br>337:14<br><b>strengths</b> 135:15<br>148:24 149:13<br><b>strickland</b> 190:19<br>190:21 191:9<br><b>strictly</b> 137:19<br><b>strike</b> 188:2<br>223:15 253:24<br>259:13 261:12<br>277:15 317:16<br>325:8 326:14<br>332:19 359:22<br><b>string</b> 16:11 20:14<br><b>strong</b> 170:21 | <b>struggling</b> 117:21<br><b>studied</b> 39:5<br><b>stuff</b> 93:12 362:24<br><b>style</b> 283:10<br><b>subheading</b> 192:3<br><b>subject</b> 127:16<br>274:11 294:17<br>296:12 338:8<br><b>submit</b> 357:4<br><b>submitted</b> 15:20<br>37:11 173:25<br>194:7 233:19<br>357:8<br><b>submitting</b> 233:21<br><b>subpoena</b> 216:14<br><b>subpoenas</b> 60:13<br><b>subscribed</b> 371:10<br>372:14 373:21<br><b>subsequent</b> 188:9<br>200:10<br><b>substance</b> 27:6<br>67:2 86:11 94:12<br>325:24 326:17<br>335:2<br><b>substances</b> 13:19<br>64:24 67:11,16<br>69:11 87:13 91:19<br>97:8 124:1 125:6<br>126:4 132:18<br>161:24 177:22<br>192:5 194:7,10<br>199:3 200:4<br>229:17 247:22<br>258:9 261:20<br>282:2 310:2 327:2<br>334:22<br><b>substantial</b> 33:18<br>33:20 88:15,23,25<br>89:1,2,7,9,17,19<br>89:22,25 90:6,7<br>107:4,11 |
|--|---|--|---|

[substantially - swift]

Page 62

|  |  |  |   |
|--|--|--|---|
| <b>substantially</b><br>52:12 53:3 116:15<br>118:7 149:18<br>159:13 340:3  | <b>superior</b> 370:1<br><b>superiors</b> 77:3<br><b>superseding</b> 17:13<br>197:7,16 198:1,21<br>202:15,22 207:18  | 276:16 279:16,25<br>280:19 282:25<br>290:25 293:2<br>297:12,22 298:1<br>298:19 302:15<br>304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11 | 292:22 293:6,11<br>293:17,20 294:3<br>295:3,12,13 319:2<br>319:10 335:13<br>345:7 352:21  |
| <b>substantive</b><br>367:18   | <b>supervision</b><br>369:10   | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  | <b>swear</b> 23:23  |
| <b>suburbs</b> 62:25   | <b>supervisor</b> 59:22<br>60:4 137:13<br>143:12   | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  | <b>swift</b> 7:18 13:6<br>160:22,23 161:4,6<br>161:10,13 163:4,5<br>163:8,9,12,20<br>164:6,9 166:4,16<br>168:1,11 174:18<br>175:20 176:4,16<br>176:19,21 177:2,6<br>177:14 178:10<br>179:21 180:8<br>183:1 184:6,25<br>185:4,5,6 186:7<br>188:17,18 189:12<br>189:16,20 190:3,6<br>190:22 196:6,15<br>196:22,23 205:6<br>205:12,25 206:21<br>207:9,11 211:15<br>213:1,4,9 214:10<br>214:17 218:19<br>219:2,15,24<br>220:15,20 221:6,8<br>221:13,19 222:20<br>223:13 224:12,16<br>225:4,18 226:18<br>226:25 228:6<br>230:11,18 231:18<br>232:8,14 233:2<br>234:7,16,23<br>235:13 236:13,18<br>236:19,21 237:23<br>238:5,13,21<br>240:11,12,20,24<br>241:17 242:12,17<br>242:25 243:2,4 |
| <b>successful</b> 297:1  | <b>support</b> 8:6   | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>sued</b> 246:4  | <b>supporters</b> 256:11   | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>suffice</b> 278:8<br>279:3  | <b>supporting</b> 238:14   | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>sufficient</b> 88:17<br>266:3,3 269:22,22<br>270:10 271:12,17<br>271:19,22 313:18<br>319:10 320:19,22<br>320:25 326:6<br>327:16 344:17,18 | <b>supposed</b> 71:25<br>88:3 90:19 96:2<br>110:11 111:12,21<br>112:11 189:17<br>308:22  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>suggest</b> 68:11<br>122:2 157:17<br>158:24 159:2<br>319:16 364:1   | <b>supposedly</b> 107:2  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>suggested</b> 124:20<br>125:8   | <b>sure</b> 32:18,19,25<br>33:8 34:19 38:23<br>44:10 55:2 61:11<br>67:9,25 71:11,14<br>71:17 72:13 73:9<br>74:1 76:16 82:22<br>87:3,7 90:3<br>104:25 119:3<br>123:1 126:13<br>143:21 152:6<br>162:25 163:22,24<br>181:22 190:7,25<br>206:6 215:2 225:9<br>226:14 236:12<br>246:8 252:10<br>253:10 256:18<br>261:1,6 265:12<br>267:20 268:11<br>269:9 270:5 | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>suggesting</b> 36:10<br>111:10 147:17   |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>suggestion</b> 364:17<br>365:6 366:17   |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>suggestions</b> 328:2   |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>suggests</b> 103:14<br>121:24 137:1   |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>suite</b> 3:18 4:9 5:18<br>7:11 9:9,18 12:20<br>370:2   |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>sum</b> 241:4   |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>summaries</b> 38:11   |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>summarize</b> 38:8  |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>summarized</b> 200:5  |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>summary</b> 298:4   |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |
| <b>summit</b> 53:4<br>167:15   |  | 304:23 309:9,15<br>310:22 313:8<br>315:15,16 322:4<br>325:21 326:8<br>328:14 329:4,9<br>333:21,25 339:13<br>347:2 348:17<br>354:4 356:3<br>360:17 361:4<br>364:6 367:11  |   |

|  |   |  |   |
|--|---|--|---|
| 244:24 306:18<br>358:17,21 359:9<br>361:17,25 362:6<br>362:13,19 363:5<br>364:10 366:12,23<br>367:2,7,14,20<br>368:3,6<br><b>switch</b> 59:12<br><b>switching</b> 82:20<br>309:24<br><b>sworn</b> 24:2 371:10<br>371:13 372:14,18<br>373:21<br><b>system</b> 46:16<br>71:12,18,20 72:1,5<br>72:9 80:13 81:4,5<br>81:8 88:19,20<br>90:14,19 97:18<br>103:6 112:21<br>113:10,10 114:5<br>175:2 178:25<br>194:8,11 227:7<br>232:25 251:11<br>257:21 269:6,21<br>276:4 299:22<br>319:21 321:6,23<br>322:2,19 323:4,7<br>326:5 327:9,12,15<br>331:14 333:10<br>334:9 340:2 344:3<br><b>systematic</b> 344:20<br><b>systemic</b> 107:4<br>281:20<br><b>systems</b> 46:22,23<br>47:17 48:9 67:24<br>67:25 70:23 79:17<br>107:3 161:19<br>320:16 322:5 | <b>t</b><br><b>t</b> 22:1,1 369:1,1<br><b>tab</b> 86:13,16 273:1<br>285:21 286:14<br>287:2,9,16,23<br>288:3,9,21 289:2,6<br>289:11,19 291:5<br>294:11 295:22<br><b>tablets</b> 134:7<br>139:20 140:2<br>153:18<br><b>tactical</b> 61:10,14<br><b>tail</b> 102:15<br><b>take</b> 33:21,23<br>47:20 49:6 52:17<br>78:1 80:11 82:20<br>84:20 96:18 98:1<br>112:11 117:14<br>118:12 120:25<br>145:12 155:19<br>160:3 195:10<br>204:17 215:12<br>220:22 223:5<br>225:2,11 252:3<br>254:16 259:19<br>270:14 272:20<br>281:2 283:19<br>285:8 286:14,21<br>294:8 296:1 298:3<br>299:14 308:1<br>322:11 340:18<br>357:13 365:1,3,8,9<br><b>taken</b> 22:5 79:10<br>230:21 264:8<br>317:12 356:7<br>369:8<br><b>takes</b> 170:25<br><b>talk</b> 24:19 53:6,21<br>69:7 147:19<br>153:10 163:21<br>212:23 213:15,19 | 215:13,24 226:10<br>231:25 246:8<br>247:4 262:11<br>267:12 268:22<br>280:8 300:7 301:8<br>314:4 338:20<br>342:18 343:10<br>358:24<br><b>talked</b> 85:9 107:19<br>133:21 165:11<br>172:12 176:4<br>186:17 226:16<br>236:24 247:10<br>257:5 267:1<br>268:16 276:17<br>306:22 340:25<br>356:5<br><b>talking</b> 37:5 46:24<br>81:3,7 85:5 97:17<br>102:22 124:6<br>126:11 127:1<br>130:1 148:2<br>150:25 153:17<br>180:12 192:17<br>203:19 208:9<br>210:14 228:23<br>229:23 235:14<br>247:3 250:21<br>254:22,23 260:24<br>265:12 266:13,20<br>274:14,16 276:10<br>286:25 296:20<br>309:19,20 322:1<br>330:25<br><b>talks</b> 220:2 232:24<br>336:10<br><b>tapentadol</b> 253:7<br><b>tara</b> 5:14 303:18<br><b>targeting</b> 337:17<br><b>task</b> 17:9,10 61:22<br>62:6 190:14,15,17 | 191:7,10<br><b>taught</b> 66:15<br>67:23<br><b>team</b> 130:25<br>362:20 364:6<br><b>ted</b> 190:19<br><b>telephone</b> 243:13<br>278:7<br><b>tell</b> 54:17 76:18,23<br>77:1 80:9 81:6<br>95:25 157:7 161:6<br>168:11 185:7<br>204:19 227:15<br>241:20 242:3<br>249:2 254:20<br>258:10 267:8<br>269:3<br><b>telling</b> 65:2 82:1,6<br>84:16 149:4,16<br>159:11 326:11<br><b>tells</b> 81:4 131:8<br>208:2 354:3<br><b>temporary</b> 277:5<br><b>ten</b> 36:3 85:18<br>89:16,16 95:14,17<br>152:19 160:8<br>181:15 219:25<br>340:15<br><b>tend</b> 150:1<br><b>tended</b> 135:14<br><b>tenfold</b> 140:9<br><b>tennessee</b> 208:4<br><b>term</b> 37:21 98:25<br>192:23 193:1<br>233:12 320:1,5,7<br><b>terminology</b><br>155:18 320:13,15<br><b>terms</b> 55:20 77:7<br>83:17 94:11<br>111:16 188:19<br>193:13 281:4 |
|--|---|--|---|

[terms - think]

Page 64

|                            |                          |                       |                    |
|----------------------------|--------------------------|-----------------------|--------------------|
| 283:11                     | 262:10 306:24            | 112:11 122:1,22       | 180:16 181:24      |
| <b>test</b> 83:20          | 323:15,23 324:11         | 124:20 143:23         | 183:22 192:20      |
| <b>testified</b> 24:3      | 328:1 333:16             | 174:10 257:20         | 201:13 203:10,11   |
| 30:10,20 48:2              | 334:24 361:10            | 271:15 302:12         | 206:1,2 211:18     |
| 55:3 63:9 74:6,9           | 371:6,7 372:6,9,12       | 312:10 325:3          | 213:21 214:1       |
| 120:5 127:15               | <b>texas</b> 4:10 9:10   | 331:7 345:3 352:5     | 220:3 225:15       |
| 128:1 133:25               | <b>tfumerton</b> 5:21    | 352:10,18 360:16      | 228:20 230:9,22    |
| 156:25 157:6               | 338:19                   | <b>think</b> 34:20,22 | 231:2,3,8,11       |
| 158:14 161:16              | <b>thank</b> 75:3 101:10 | 35:4,6,8,13,16        | 232:24 233:5       |
| 211:19 214:22              | 136:21 155:22            | 42:11,16 44:11,19     | 241:8,8,10,13,22   |
| 218:20,21 220:10           | 160:5 176:17             | 46:19 47:3 48:22      | 241:23 242:8       |
| 226:4 228:6 231:8          | 177:4 185:6              | 53:14,22 54:12        | 244:20 247:10      |
| 261:15,19,25               | 248:20 264:21            | 58:10 61:9 63:14      | 248:22 249:5,25    |
| 264:7 269:3,10             | 273:17 274:3             | 63:14 65:7,19         | 252:12 253:24      |
| 324:8 339:14               | 283:10 292:19            | 66:3,7 71:1 73:21     | 254:1,7,19 257:5   |
| 345:17 347:6               | 296:8 309:24             | 74:10 79:21 80:3      | 258:12,14,21       |
| <b>testify</b> 28:10 55:6  | 331:19 348:5             | 80:19,20,21 84:4,7    | 259:23 262:22,24   |
| 57:4 65:21 110:7           | 362:13 366:16            | 84:15,25 85:24        | 264:3,7 265:5,6,11 |
| 221:22 324:20              | 367:7,9 368:3            | 89:7,12,22,25 90:7    | 265:13 266:4,9,11  |
| 325:11 360:10              | <b>thanks</b> 24:22      | 90:8 91:5,12          | 267:9 269:10,24    |
| <b>testifying</b> 28:12,14 | 244:25 273:7             | 92:23,24,25 93:10     | 270:3 276:25       |
| 223:19 226:3               | 364:9,10 368:5           | 96:12 97:7 99:22      | 277:4 278:15       |
| 263:9,11                   | <b>theft</b> 87:12 108:9 | 99:23 102:14          | 281:8,9 292:17     |
| <b>testimony</b> 1:17      | 110:13                   | 103:8,9,10,18,20      | 293:24 297:9       |
| 21:12 27:24 29:10          | <b>theoretical</b> 342:2 | 105:24 109:5          | 299:9 302:9 303:3  |
| 30:2,3,6,8,24 31:8         | <b>theory</b> 260:5      | 110:25 111:4          | 307:5 309:15       |
| 31:25 32:5 46:14           | <b>thereto</b> 22:14     | 112:1,23 113:21       | 312:8 313:13,14    |
| 46:19 53:12 63:25          | 369:9                    | 115:20 116:5,9        | 314:7,17,19,20,24  |
| 64:10 127:11,13            | <b>thing</b> 41:7 49:4   | 117:16,20 119:5,6     | 316:1,3,12 317:9   |
| 127:21 129:1,4             | 55:21 60:14 125:7        | 121:23 124:8,23       | 317:18 318:2,7,8,9 |
| 130:1,20 131:5             | 139:4 145:10,20          | 125:5 127:11          | 318:11,17,18,20    |
| 134:15 135:21              | 146:19 157:15            | 129:21,22,25          | 318:24 319:15      |
| 156:19,22 157:10           | 166:21 186:23            | 131:12,18,21          | 321:20 323:18      |
| 158:22 161:21              | 212:13 240:21            | 132:8,20 134:3,4      | 325:18 327:7       |
| 212:8,20 213:3,8           | 265:14 277:11            | 134:13 137:22         | 329:5,7,9,14,15    |
| 214:6 215:16               | 361:21 362:15            | 141:12 142:1          | 330:6 332:16       |
| 217:19 219:17,22           | 364:1                    | 143:7,8 149:23        | 333:19 336:9       |
| 220:10,12 221:3            | <b>things</b> 59:9 60:21 | 152:5 154:21          | 337:7,21,21,23     |
| 222:9,19,22                | 66:8 71:10 73:6,8        | 159:11 160:3          | 338:1 340:15       |
| 224:14 235:10              | 73:17,23 75:7            | 165:5,13 170:6,7      | 344:13,15,17       |
| 243:16 261:19,22           | 88:8 90:24 108:15        | 170:17 176:1,14       | 346:6,12,17,20     |

[think - today]

Page 65

|  |   |  |  |
|--|---|--|--|
| 347:12 350:15<br>351:7,8 354:14<br>357:12 360:6<br>364:17,18<br><b>thinking</b> 64:9,11<br>302:22 318:5<br>356:4<br><b>thinks</b> 74:14<br><b>third</b> 26:20,23<br>118:19 172:13<br><b>thirteen</b> 42:17,20<br>60:3 64:20 131:14<br>201:5<br><b>thirtieth</b> 244:11<br><b>thirty</b> 58:11 62:5<br>65:15 74:6 77:25<br>134:7 153:22<br>175:5 181:14,18<br>181:20 182:8<br>244:4,7,9,12,23<br>316:1 329:20<br>346:2,4,15 347:1<br>370:18<br><b>this's</b> 358:25<br><b>thorough</b> 72:25<br>73:1 144:19<br>217:21<br><b>thought</b> 62:9 63:9<br>67:16 83:16<br>103:23 133:21<br>150:22 176:24<br>256:14 285:5<br>307:23 359:12<br>360:1<br><b>thousand</b> 54:8<br>55:7 57:16 58:7<br>116:1,7 140:8,8,21<br>148:22 149:7,17<br>151:12 152:7,8,13<br>152:19,24 153:14<br>187:11,16,23 | 188:5,22 189:21<br>195:7,23 200:23<br>201:4 202:16<br>206:12 256:2<br>268:23 270:20<br>271:8 272:6,13<br>274:18 276:12<br>316:2,3<br><b>thousands</b> 27:2,3<br>65:25 332:8,9,9,10<br>332:11,11<br><b>three</b> 1:12 33:2,17<br>39:3,16 51:2<br>52:13 66:21<br>107:20 117:15,17<br>148:21 158:14<br>172:1,5,24 175:5<br>182:21 187:10,16<br>187:22 188:5,21<br>188:23 189:1,2,21<br>195:7,22 196:2<br>201:4 206:12<br>221:24 224:18<br>225:2,10,15,19<br>226:20 235:1<br>242:22 289:23<br>316:2 340:11,12<br>340:19,21 349:1<br>365:1,3,16<br><b>threshold</b> 48:8<br>51:20 113:10<br>268:24 270:21<br>271:8 272:1,6,14<br>272:16 275:12<br>276:11,13 277:25<br>278:24 320:23<br><b>thresholds</b> 259:10<br>320:21<br><b>throw</b> 363:12<br><b>throwing</b> 320:25 | <b>tie</b> 318:16<br><b>till</b> 189:10<br><b>time</b> 22:12,13<br>23:17 26:3 29:13<br>46:20,21 52:18<br>58:21,24 59:2,5,9<br>61:8 62:8,17<br>63:18 76:17 77:23<br>82:24 83:3 86:3<br>100:13,21,24<br>104:20 105:4<br>113:23 120:12,19<br>121:3,12,14 126:1<br>128:4 129:5,6<br>131:20,24,25<br>132:3 135:14<br>140:10 142:11,13<br>143:19 145:12<br>152:7 153:19,25<br>154:5,10,17 160:6<br>160:11,19 163:25<br>164:4,21 180:11<br>182:4 185:17,24<br>187:24 189:25<br>191:19 194:9<br>195:10 198:9,11<br>198:18 200:14,16<br>200:17,24 201:5<br>202:10,18 205:5<br>206:5 209:15<br>218:15 219:17,23<br>220:23,23 226:20<br>230:3 231:10<br>235:23 238:20<br>239:10 241:4,16<br>241:20,21,25<br>242:13,23 243:1,5<br>244:3,22 245:2,6<br>249:23 251:23<br>255:6 262:22<br>264:4 269:7 | 275:24 277:6<br>285:2 286:20<br>287:20 297:7<br>302:3 303:3,7,12<br>308:2 310:12<br>314:25 318:6<br>322:2 323:11<br>326:7 330:20<br>333:24 334:16<br>338:8,23 339:3<br>340:8,10,14<br>346:21 348:5<br>357:18,23 358:22<br>359:3,8,24 360:5<br>360:18 361:14,17<br>367:12,21 368:8<br><b>timeline</b> 156:16<br><b>times</b> 40:9 113:1<br>117:15,18 128:19<br>139:21 196:2<br>205:19 206:16<br>218:16 228:7<br>238:11 269:11<br>284:17 285:24<br>310:2,7 340:24<br><b>timing</b> 99:10<br><b>tiny</b> 187:21<br><b>tips</b> 283:9<br><b>tired</b> 359:15 365:7<br>365:8<br><b>title</b> 233:9,18,23<br><b>titled</b> 31:19<br><b>tl00000001</b> 14:15<br><b>tn</b> 7:5 369:24<br><b>today</b> 24:20 27:21<br>28:21 32:2,8 37:2<br>37:10,11,16 47:16<br>55:5 56:24 57:2,4<br>161:17 172:13<br>173:17,24 196:4,7<br>203:6 211:19 |
|--|---|--|--|

[today - try]

Page 66

|   |   |   |  |
|---|---|---|--|
| 225:23 226:19<br>245:15 248:25<br>252:21 267:13<br>302:4 304:4<br>306:16 339:12<br>344:23 359:10,12<br>360:1,12 364:25<br>365:24<br><b>today's</b> 23:16<br>368:7<br><b>told</b> 28:12 96:2<br>179:15 204:9<br>359:9<br><b>toledo</b> 63:19 64:8<br><b>tomorrow</b> 262:19<br>359:15,19 360:3<br>360:18 361:15,22<br>362:3 364:16<br>365:2,15<br><b>ton</b> 300:4<br><b>tonight</b> 365:11,13<br>365:14<br><b>top</b> 42:19 55:4<br>64:19 85:25 86:10<br>86:18 104:24,25<br>115:17 168:16,18<br>170:2 172:1,24<br>183:12 185:12<br>191:23 197:4<br>270:16 282:19<br>284:8 289:20<br><b>topic</b> 40:22 132:21<br><b>topics</b> 40:3 293:25<br>303:25 309:24<br><b>total</b> 14:20 42:12<br>55:10 58:12 79:20<br>133:6 241:4 256:4<br>340:14 345:2,2<br>359:13<br><b>totaled</b> 58:6,11 | <b>totality</b> 112:25<br>134:3 332:25<br><b>totally</b> 41:9 158:4<br>266:10 344:7<br><b>totals</b> 148:25<br>353:21<br><b>touched</b> 112:18<br><b>touhy</b> 73:22 74:10<br>74:13,23 84:5,7,10<br>219:5 356:16<br><b>touhys</b> 73:25<br><b>track</b> 1:12 23:20<br>24:8,24 25:5 30:4<br>30:8,12 31:21<br>41:15 50:11,12,13<br>50:15,24 51:13<br>52:4,11,14,21 53:2<br>54:17,23 55:7,11<br>58:16,19 63:10,21<br>241:25 245:19<br>306:24 340:9<br>357:8 363:9 370:6<br>371:3 372:3<br><b>tracking</b> 16:9<br>99:11 190:7<br><b>trailer</b> 294:16<br><b>trailing</b> 51:19<br>56:11 244:4,7,12<br>244:23<br><b>trained</b> 72:23<br>222:3 324:10<br><b>training</b> 66:12<br>91:20 93:4 319:19<br>324:7,17,20,23,24<br>325:1,10,11,15,16<br>325:17,18,21,22<br><b>transaction</b> 49:13<br>116:22,25 331:5<br><b>transactional</b><br>252:5 | <b>transactions</b> 48:12<br>51:20 52:10,13<br>53:2 132:13,18<br>200:4<br><b>transcribed</b> 371:7<br><b>transcript</b> 16:6<br>127:15 128:5<br>212:11 215:11<br>226:21 235:6<br>237:15 367:22,24<br>369:12,25 370:11<br>370:12 371:5,12<br>372:5,11,17<br><b>transfer</b> 145:15<br><b>transparent</b> 213:5<br><b>travel</b> 273:15<br><b>traveled</b> 351:20<br><b>treat</b> 244:11<br><b>treated</b> 36:22,24<br>244:10<br><b>trees</b> 51:16<br><b>trend</b> 317:15<br>318:9,17<br><b>trial</b> 16:6 22:12<br>28:9 30:9,11,12<br>32:5 33:24 63:10<br>63:21 173:8<br>231:24 261:18<br>360:10 361:23<br>364:6<br><b>trick</b> 86:19<br><b>tricky</b> 188:13<br>269:10<br><b>tried</b> 33:7<br><b>triple</b> 140:3<br><b>tripling</b> 314:16<br><b>trouble</b> 74:17<br>111:14 157:3<br><b>true</b> 29:6 92:8<br>104:18 105:2<br>112:5 135:7,18 | 144:21 162:1<br>210:14 241:4<br>253:3 310:16<br>315:8 318:15<br>337:6 339:18<br>351:11 369:11<br><b>trumbull</b> 13:19<br>14:14,22 15:10<br>16:17,25 17:7<br>25:2 41:14 42:5<br>50:9 107:6 118:20<br>119:11 120:4<br>121:5 133:9 136:4<br>146:5 151:4<br>156:21 164:7<br>168:17 169:16,23<br>170:4 171:11<br>172:2 173:5<br>174:14,21 175:15<br>179:8,25 180:17<br>181:25 183:16,20<br>184:1,8,14,17<br>185:11,15 195:21<br>196:3 206:10,17<br>207:7,16 208:17<br>209:14 210:12<br>228:13,25 229:5<br>239:4,15 241:6<br>242:14 243:7,19<br>244:17 267:6<br>272:1,6,7,15,17<br>281:19 311:18,22<br>314:1 335:3 336:4<br>343:15 352:16<br>353:2,8,12,16<br>354:13,25<br><b>truthfulness</b> 32:3<br><b>try</b> 32:1 37:1<br>51:10 77:23 80:7<br>87:3 92:2,11 95:6<br>96:23 99:9 108:12 |
|---|---|---|--|

[try - unreasonable]

Page 67

|                          |                           |                         |                           |
|--------------------------|---------------------------|-------------------------|---------------------------|
| 112:7 119:9              | 327:17 328:9,19           | <b>u</b>                | 252:1 255:20              |
| 122:23 123:12            | 328:25 329:8              | <b>u</b> 22:1           | 256:7 265:13              |
| 175:22 240:24            | <b>two</b> 30:11 42:18    | <b>uh</b> 204:4         | 268:3 272:4 297:4         |
| 260:20 280:2             | 51:17 53:10 58:10         | <b>ultimately</b> 46:14 | 320:10 321:15             |
| 303:24 312:17            | 58:11 61:25 76:11         | 99:12 108:4             | 334:20 344:14             |
| 355:12                   | 101:11 106:2              | 135:21 157:1,2          | <b>understood</b> 27:22   |
| <b>trying</b> 89:2 90:8  | 107:16 108:1,5,11         | <b>umbrella</b> 70:9    | 215:21 219:2              |
| 98:22 150:22             | 108:23 117:17             | <b>unannounced</b>      | 226:18 227:1              |
| 154:21 165:21            | 135:2 155:2               | 72:18,21                | 254:4 367:20              |
| 177:1 213:5              | 159:14 163:16             | <b>unbilled</b> 58:24   | <b>undertake</b> 77:11    |
| 236:15 259:18            | 165:17 169:22             | 59:2,5                  | <b>unexpected</b> 91:8    |
| 262:17 265:14            | 171:12,15 172:16          | <b>uncovered</b> 79:8   | 95:1,18 97:13             |
| 268:4 269:9              | 174:9 180:10              | <b>understand</b> 27:14 | <b>unfair</b> 177:7       |
| 301:25 303:24            | 181:15,18,19              | 27:16,19 32:24          | <b>unimportant</b>        |
| 308:12 309:5             | 182:8,9,10 186:2,4        | 33:9,13 38:23           | 159:20                    |
| 338:3 348:5 354:8        | 188:1 195:7               | 49:25 95:4 100:4        | <b>unique</b> 61:7 66:7   |
| 358:23 364:2             | 203:12 242:11             | 104:15 110:25           | <b>uniquely</b> 64:21     |
| 365:17                   | 246:10 250:22             | 120:7 126:14            | 65:10                     |
| <b>turn</b> 38:12 86:5   | 251:2 268:6               | 136:13 165:16           | <b>uniqueness</b> 34:21   |
| 130:14 131:5             | 271:15 286:24             | 169:2,5 171:4           | 65:19                     |
| 150:3 154:23             | 315:11,11,14,16           | 192:15 193:11           | <b>unit</b> 170:25 268:24 |
| 160:16 164:10,19         | 315:19,25 318:19          | 198:6 212:15            | 272:14 303:6,11           |
| 186:8 234:23             | 347:13 350:2              | 214:3,22 218:21         | 338:22 339:2              |
| 307:11 312:1             | 354:21 360:18             | 227:14 244:15           | 357:17,22 359:2,7         |
| 339:25 341:7             | <b>tying</b> 316:13       | 246:19,24 247:8         | <b>united</b> 1:1 23:7    |
| 349:21 351:16            | <b>type</b> 35:6,14 56:23 | 247:16 258:7            | 25:24 66:1                |
| <b>turned</b> 122:17     | 60:21 68:5 73:2           | 264:22 265:14           | <b>units</b> 16:16 148:22 |
| <b>twelve</b> 66:11,19   | 73:12 114:4 116:9         | 268:5 276:24            | 149:17,25 150:11          |
| 125:25 131:11,12         | 133:20 135:13             | 277:20 280:19           | 151:12 153:14             |
| <b>twenties</b> 126:3    | 137:20 159:8              | 281:6 285:4 304:2       | 155:1 183:11              |
| <b>twenty</b> 40:6 42:11 | 247:25 314:18             | 308:12 314:5            | 187:17 188:6              |
| 42:12 46:25 54:7         | 326:5 346:18              | 315:15 320:9            | 189:23 195:7              |
| 54:8 58:11 94:19         | <b>types</b> 96:7 123:23  | 336:20 343:1            | 204:23 205:9,15           |
| 95:10,11 97:8,10         | 136:6 159:6               | 344:21 348:7            | 206:12 255:2              |
| 121:2,2 126:7,15         | <b>typewriting</b>        | 350:11 355:10           | 256:4 341:12              |
| 126:15 127:17            | 369:10                    | 356:1,3 361:16          | <b>unlawfully</b> 41:22   |
| 128:1,14 132:23          | <b>typically</b> 159:7    | 366:2                   | 43:11,16 159:17           |
| 133:22 177:10            | 215:23 217:2,8            | <b>understanding</b>    | <b>unlicensed</b> 248:16  |
| 187:10 191:11            |                           | 48:6 56:24 74:17        | 248:17,19                 |
| 195:23 206:12,16         |                           | 78:16 171:6,7           | <b>unreasonable</b>       |
| 321:13,17,21,22          |                           | 246:3,15 251:12         | 131:21 132:8              |

|  |   |   |  |
|--|---|---|--|
| <b>unsure</b> 355:10<br><b>unterreiner</b> 10:13<br><b>unusual</b> 90:15,20<br>91:3,7,15 94:25<br>117:16 135:3,13<br>249:3,12 323:13<br>331:15 333:10<br><b>unwrap</b> 285:11<br><b>upper</b> 63:6 64:4<br><b>use</b> 35:25 49:9,9<br>68:25 83:10 87:22<br>110:1 113:4,10,18<br>114:9 115:1<br>125:17,17 132:5<br>152:9 155:17<br>192:12 193:20<br>200:6 250:25<br>319:9,21 322:16<br>355:2<br><b>uses</b> 116:23<br><b>usual</b> 91:13,14<br>117:15 132:16<br><b>usually</b> 61:18<br><b>utilize</b> 170:24<br>244:20 319:5<br><b>utilized</b> 49:23 52:7<br>78:10 232:25<br>319:3<br><b>utilizes</b> 93:24 | 355:7,10,16<br><b>vendors</b> 256:20<br><b>ventura</b> 12:19<br><b>verbatim</b> 326:25<br><b>verge</b> 358:9<br><b>verification</b><br>276:21<br><b>verified</b> 126:10<br><b>veritext</b> 11:8<br>370:1,7 373:1<br><b>veritext.com.</b><br>370:17<br><b>version</b> 114:21<br>133:5 164:24<br><b>versus</b> 41:2 124:21<br>125:21 126:1,17<br>126:22 131:12<br>134:22 315:11<br><b>video</b> 1:15<br><b>videographer</b><br>23:15 82:24 83:3<br>160:6,11 163:25<br>164:4 245:2,6<br>303:5,10 338:21<br>339:1 357:16,21<br>359:1,6 367:12<br>368:7<br><b>videographers</b><br>11:7<br><b>videotaped</b> 14:17<br>15:24 17:15 23:18<br><b>view</b> 47:15 69:18<br>76:2 117:23,25<br>165:4 223:6<br>259:19 270:10<br>279:9<br><b>violated</b> 100:11,14<br><b>violating</b> 41:4<br>103:24<br><b>violation</b> 86:4<br>221:25 | <b>violations</b> 226:5<br>227:4<br><b>virginia</b> 5:9 30:13<br>66:12 202:6<br>261:15 263:9,12<br>327:25<br><b>virtually</b> 48:1<br><b>visit</b> 148:7,23<br>173:22 239:3<br>349:11<br><b>visited</b> 310:18<br><b>visiting</b> 143:16<br><b>visits</b> 346:24<br><b>visual</b> 146:19<br>147:3 286:5<br><b>void</b> 261:10<br><b>volume</b> 1:14 13:11<br>14:1,17 15:1,25<br>16:1,6,20 17:1<br>18:1 19:1 20:1<br>21:1,9 86:1 124:2<br>171:2 285:10<br>326:6<br><b>volumes</b> 273:9<br><b>voluntary</b> 317:13<br><b>vs</b> 251:19 | <b>walgreens</b> 7:16<br>16:20 17:1 21:7<br>25:15 50:17 162:4<br>167:9 171:16,20<br>173:9,10 174:2,20<br>176:9 177:11<br>180:16,24 181:4<br>182:4 185:15,21<br>186:2,3,10 187:5,9<br>187:9,15,22 188:4<br>188:20 189:24<br>192:19 195:20,22<br>196:3,17 206:10<br>206:11,17 210:5,8<br>211:1,11 218:22<br>222:5,10,23 223:7<br>223:18 224:18,20<br>225:5,24 226:7,17<br>226:23 227:3,19<br>227:20,25,25<br>228:12,24 229:4,8<br>229:15,24,25<br>230:2,12,21,24,25<br>231:9,13 233:2,9<br>233:15,19,24<br>234:11,19 235:2<br>237:3,19,23<br>238:19,23 239:12<br>241:3,5,16,21<br>242:5,13,21,24<br><b>walgreens's</b> 161:7<br><b>walk</b> 80:14 291:1<br><b>walked</b> 204:15<br><b>walmart</b> 5:13 21:1<br>21:4,7 25:15<br>42:16,21 50:21<br>51:21 52:10 53:3<br>167:9 303:19<br>304:14,16 305:3,5<br>305:20 306:5,10<br>310:18 311:4,17 |
| <b>v</b>   |   | <b>w</b>  |  |
| <b>v</b> 370:6 371:3<br>372:3<br><b>varied</b> 114:7,12<br><b>varies</b> 42:15<br><b>various</b> 45:8 47:15<br>85:5 86:19 89:25<br><b>vast</b> 48:10 353:22<br><b>vastly</b> 35:7<br><b>vault</b> 80:14<br><b>vendor</b> 230:9,13<br>230:23 254:11   |   | <b>wacker</b> 5:18<br><b>waffling</b> 216:21<br><b>wag</b> 16:23 17:5,8<br>17:12,14 168:5,9<br>184:22,23 186:8<br>190:3,4 196:20,22<br>198:2 214:7,8<br><b>wait</b> 49:10 189:10<br>262:6<br><b>waited</b> 358:1<br><b>waiting</b> 214:11<br><b>waived</b> 370:19<br><b>walgreen</b> 7:17,17  |  |

[walmart - workers]

Page 69

|  |   |  |   |
|--|---|--|---|
| 311:21 312:19,21<br>313:2,12,15 315:7<br>317:4,19 319:5,17<br>320:5,10,16 321:3<br>321:25 322:5<br>323:5 327:18,22<br>328:7,23 329:19<br>330:19,21 331:2,4<br>331:6,14 332:6,8<br>332:11,22 333:13<br>334:5,7,21 335:1<br>335:18,22,25<br>336:3 337:5<br>338:11 339:11,15<br>362:11<br><b>walmart's</b> 309:25<br>310:11 311:7,11<br>317:7,20 321:16<br>323:12 333:8<br>336:7,24 337:19<br><b>want</b> 27:7 47:19<br>51:16 52:17 54:2<br>80:15 87:25 99:9<br>110:13 118:14<br>119:3 124:14<br>126:13 145:11,18<br>147:16,19 148:25<br>149:8 180:16<br>188:12 189:12,25<br>191:17,19 198:8<br>199:19 212:7,23<br>213:1,16 215:11<br>217:3,18 219:20<br>220:16,22,25<br>228:14 230:25<br>235:7 243:13<br>264:22 265:12<br>268:14 271:21<br>275:7 276:24<br>277:20 279:12,13<br>283:17 304:18 | 305:9,24 306:9<br>308:1,2 314:5<br>316:22,25 328:11<br>339:9,25 342:17<br>342:21 343:10<br>358:24 359:10<br>360:13,16 361:6<br>363:22 367:11,14<br>367:23<br><b>wanted</b> 115:18,22<br>118:18 268:15<br>270:20 271:18<br>285:22 361:3<br><b>wanting</b> 276:11<br><b>wants</b> 220:4<br>221:17 278:15<br><b>warehouses</b> 26:4<br>110:17<br><b>warrants</b> 60:19<br><b>warren</b> 171:18<br>180:25 181:17<br><b>washington</b> 7:12<br><b>watch</b> 346:25<br><b>waubel</b> 5:11<br><b>way</b> 43:12 44:19<br>55:14 81:6 98:23<br>100:1,16,22 110:1<br>167:23 171:1<br>174:8 186:18<br>215:19 216:24<br>249:6,10 266:2<br>297:7 332:3,17<br>344:20 363:12,24<br>365:18<br><b>ways</b> 165:18 312:6<br><b>we've</b> 150:24<br>153:15 172:11<br>173:25 180:18,21<br>181:16<br><b>website</b> 169:8,10<br>169:17 185:10 | <b>week</b> 30:11,18<br>66:11 72:20<br>328:18 363:6<br><b>weeks</b> 66:19,23<br><b>weight</b> 171:8<br>337:24<br><b>weisman</b> 2:17<br><b>weismanlaw.com</b><br>2:22<br><b>weitz</b> 3:7<br><b>weitzlux.com</b> 3:12<br><b>welcome</b> 245:1<br><b>went</b> 66:4 105:4<br>121:1,12 126:1<br>144:15 146:3<br>147:2 152:7,14<br>156:10,12 169:10<br>187:21 211:2<br>238:10 239:18<br>240:8 244:19<br>267:20 300:22<br>330:11 350:24<br>355:25 362:22<br><b>west</b> 3:8 4:8 5:9,18<br>7:22 30:12 171:17<br>171:20 176:10<br>180:19 185:16<br>202:6 261:15<br>263:9,12 327:25<br><b>whatnot</b> 280:10<br><b>whatsoever</b><br>292:21 361:10<br><b>whiddon</b> 2:9<br><b>white</b> 18:11,15,19<br>18:23 19:7,11,15<br>19:19,23 20:7,11<br>287:1 290:9<br>291:14<br><b>wide</b> 153:25<br>154:10 270:21<br>281:21 321:6 | <b>wife</b> 157:2<br><b>william</b> 5:5<br><b>willing</b> 365:23<br>366:5<br><b>willoughby</b> 185:22<br><b>wish</b> 144:18<br><b>witness</b> 23:10,23<br>30:22 160:15<br>214:23 224:15<br>236:15,18,20<br>248:19 273:18,21<br>289:20,25 360:19<br>367:19 369:13<br>370:8,11 371:1,4<br>371:11 372:1,4,15<br><b>witness'</b> 370:14<br><b>wmt</b> 329:19<br><b>wondered</b> 202:1<br><b>wondering</b> 147:22<br><b>wood</b> 297:8<br><b>word</b> 88:25 126:18<br>204:18 277:19,23<br>320:25<br><b>worded</b> 215:19<br><b>words</b> 193:21<br>238:12<br><b>work</b> 33:22 54:17<br>57:23 60:24 61:23<br>61:24 131:3 141:9<br>144:4 191:11<br>203:18 211:21<br>237:4 238:3 241:3<br>242:21 297:5<br>363:19 366:9,15<br>366:22<br><b>worked</b> 47:25<br>83:13 93:2 178:17<br>182:11,14 203:4<br>203:20 204:20<br><b>workers</b> 323:21 |
|--|---|--|---|

[working - zwier]

Page 70

|   |   |  |   |
|---|---|--|---|
| <b>working</b> 39:2<br>40:21 58:25 93:4<br>141:12 147:9<br>197:22 203:17<br>204:12 209:8<br>218:15 220:8<br>238:3 241:10,15<br>242:1,9 317:10<br>340:19<br><b>works</b> 35:5 364:6<br>365:20<br><b>world</b> 112:1<br><b>worth</b> 306:12<br><b>wrap</b> 285:14,15<br><b>wrapped</b> 273:5<br><b>wright</b> 14:18<br>127:11,20,25<br>129:6<br><b>wright's</b> 129:1<br><b>write</b> 95:11 157:6<br>237:18 238:1<br>304:18,19 331:13<br>334:4 351:6,12<br><b>writes</b> 291:14<br><b>writing</b> 107:25<br>108:5 144:16<br>157:4 193:18<br>243:12 278:5<br>323:25 352:12<br><b>written</b> 211:2<br>236:22 308:10<br>309:1,4,19,22<br>323:17 324:6,16<br>332:17 342:14<br>347:14<br><b>wrong</b> 61:12 102:5<br>110:10 269:3<br>286:6 319:16,20<br>351:24<br><b>wrote</b> 209:13<br>235:17 238:8 | 273:11 276:6<br>305:14 309:6<br>313:21,22   | <b>year</b> 53:17 54:8<br>57:11,12 58:21<br>61:3,4 92:1,12,21<br>94:12,19 95:10,12<br>106:19,19 121:11<br>152:18 154:12<br>186:25 188:19,21<br>201:22 214:19<br>252:8<br><b>years</b> 36:3 37:4<br>39:3,17 54:9 57:5<br>59:12 60:3,22<br>61:2,4 62:7 64:20<br>74:6 101:18 123:8<br>125:23 129:20<br>152:6 169:19<br>188:9 211:18<br>229:11,12 230:4<br>233:20 268:15<br>283:13,13 285:2<br>286:11 314:8<br>340:20,21 343:25<br>345:20 346:2,4,6<br>346:15 347:1<br>349:1,1<br><b>yep</b> 38:15 182:1<br>229:2 254:23<br><b>york</b> 8:21,21<br>10:23 28:6,15<br>29:16,17 30:3<br>41:5 58:17 167:19<br>167:22 246:12<br>363:5<br><b>youngstown</b><br>180:25 181:17 | <b>zeros</b> 286:12<br><b>zombie</b> 145:19<br><b>zoom</b> 23:9<br><b>zuckerman</b> 7:9<br><b>zuckerman.com</b><br>7:14<br><b>zwier</b> 12:7,14 |
|   | <b>x</b>  |  |   |
|   | <b>x</b> 173:9,10   |  |   |
|   | <b>y</b>  |  |   |
|   | <b>y</b> 10:22<br><b>y'all</b> 189:8 366:19<br><b>yeah</b> 30:10 31:22<br>34:13 41:17 42:6<br>45:7,11 49:3<br>51:15 54:20 55:20<br>63:9 65:23 69:1<br>70:3 73:10 74:19<br>81:2 83:19 86:17<br>86:17,19,19,24<br>88:6 90:19,22<br>91:16,23 93:5,23<br>95:5 96:5 100:23<br>102:14 115:8<br>117:19 119:10<br>120:24 121:10<br>124:13 126:13,24<br>128:7 129:19,25<br>134:3 145:21<br>148:8 151:15<br>162:2 170:23<br>176:1,14 185:2<br>201:17 209:11<br>246:20,24 259:2<br>269:2 273:10,20<br>273:23 281:8<br>283:19 289:22<br>293:23 299:9<br>307:24 308:9,14<br>312:22 319:12<br>320:18 322:4,8<br>327:23 340:6<br>350:14 361:21<br>367:23 |  |   |
|   |   | <b>z</b>   |   |
|   |   | <b>zero</b> 47:6 115:6<br>116:2 119:15<br>165:7 166:5<br>256:16 286:1  |   |

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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